

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2010-152

1. Requested Motion:

Motion to determine that the Land Development Code is the more appropriate place to identify more specific permissible uses.

Then direct Staff to prepare a Land Development Code Amendment to indentify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use.

Why the action is necessary:

In order to complete the LPA review process.

Meeting Date:

December 6, 2010

What the action accomplishes:

**2. Agenda:
Information:**

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance
☒ Other

4. Submitter of

☐ Council
☒ Town Staff
☐ Town Attorney

5. Background:

Per Council's direction at the November 15, 2010 Town Council Workshop, Staff would offer the following motions on whether or not COP is a permissible use in the Recreation Future Land Use category:

1. Accept LPA's interpretation that COP is not a permissible use in the Recreation Future Land Use category. Or;
2. Reject LPA's interpretation and interpret that COP is a permissible use in the Recreation Future Land Use category. Or;
3. Determine that the Land Development Code is the more appropriate place to identify more specific permissible uses.

Based upon the first motion, Staff would offer the following potential motions to provide Staff with policy direction to enable the first motion.

- A. Direct Staff to prepare a Land Development Code Amendment specifically identifying COP as a **Prohibited Use** in the Environmentally Critical Zoning District. Or;
- B. Direct Staff to prepare a Land Development Code Amendment specifically identifying COP as a **Permitted Use** in the Environmentally Critical Zoning District. Or;
- C. Direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **Special Exception** to an adjacent approved COP use. Or;
- D. Direct Staff to prepare a Land Development Code Amendment to indentify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use. Or;
- E. Direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **Special Exception** to an adjacent approved COP use, **in specific geographic areas** (i.e. Downtown Core Area as identified in the Comprehensive Plan) **or to a specific primary COP use(s)** (i.e. resort, restaurant, bar, hotel, etc). Or;
- F. Direct Staff to prepare a Land Development Code Amendment to indentify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use, **in specific geographic areas** (i.e. Downtown Core Area as identified in the Comprehensive Plan) **or to a specific primary COP use(s)** (i.e. resort, restaurant, bar, hotel, etc).

6. Alternative Action:

None proposed.

7. Management Recommendations:

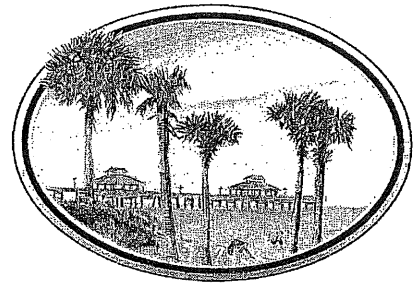
Staff recommends Council determine that the Land Development Code is the more appropriate place to identify more specific permissible uses. Then direct Staff to prepare a Land Development Code Amendment to indentify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other



Memorandum

To: Mayor and Town Council

Through: Terry Stewart, Town Manager

From: Walter Fluegel, Community Development Director

Date: November 30, 2010

Re: Consumption On-Premises (COP) in Recreation Future Land Use

Executive Summary:

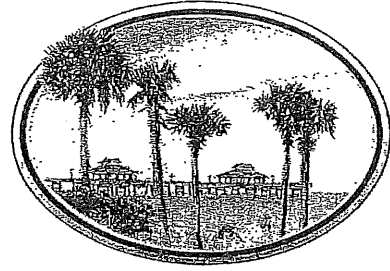
Per Council's directive at the November 15, 2010 Town Council Workshop, DCD Staff has Prepared the following potential motions for Council to act upon the COP issue. The prospective motions contemplate Council first acting upon the issue of interpreting whether or not the Comprehensive Plan allows COP in the Recreation Future Land Use category and then acting upon a motion to direct Staff to take a defined policy direction to enable the first motion on COP. Accordingly, Staff would offer the following motions on whether or not COP is a permissible use in the Recreation Future Land Use category:

1. Accept LPA's interpretation that COP is not a permissible use in the Recreation Future Land Use category. Or;
2. Reject LPA's interpretation and interpret that COP is a permissible use in the Recreation Future Land Use category. Or;
3. Determine that the Land Development Code is the more appropriate place to identify more specific permissible uses.

Based upon the first motion, Staff would offer the following potential motions to provide Staff with policy direction to enable the first motion.

- A. Direct Staff to prepare a Land Development Code Amendment specifically identifying COP as a **Prohibited Use** in the Environmentally Critical Zoning District. Or;
- B. Direct Staff to prepare a Land Development Code Amendment specifically identifying COP as a **Permitted Use** in the Environmentally Critical Zoning District. Or;

- C. Direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **Special Exception** to an adjacent approved COP use. Or;
- D. Direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use. Or;
- E. Direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **Special Exception** to an adjacent approved COP use, **in specific geographic areas** (i.e. Downtown Core Area as identified in the Comprehensive Plan) **or to a specific primary COP use(s)** (i.e. resort, restaurant, bar, hotel, etc). Or;
- F. Direct Staff to prepare a Land Development Code Amendment to identify COP in the Environmentally Critical Zoning District as a **permitted ancillary use** to an adjacent approved COP use, **in specific geographic areas** (i.e. Downtown Core Area as identified in the Comprehensive Plan) **or to a specific primary COP use(s)** (i.e. resort, restaurant, bar, hotel, etc).



Memorandum

To: Mayor and Town Council

Through: Terry Stewart, Town Manager

From: Walter Fluegel, Community Development Director *WAF*

Date: November 8, 2010

Re: Consumption On-Premises (COP) in Recreation Future Land Use

Executive Summary:

DCD Staff has analyzed this issue in depth and would offer the following potential options for Council's consideration:

1. Accept LPA's interpretation that COP is not a permitted use in the Recreation Future Land Use category. Or;
2. Reject LPA's interpretation and interpret that COP is a permitted use in the Recreation Future Land Use category. Or;
3. Determine that the Land Development Code is the more appropriate place to identify more specific permissible uses (or in this instance more specific accessory/ancillary uses and/or Special Exception uses) and that COP in Recreation should be treated as a Special Exception under specific conditions in the LDC. Then direct Staff to work with the LPA to craft a regulatory framework for permitting COP. Further, this condition could include a provision directing Staff to develop a more comprehensive COP regulatory framework, establishing more consistent provisions, such as hours of operation, noise (music/entertainment), location of service, etc.

Analysis:

DCD Staff has reviewed the LPA Resolution (attached) and the Consultant's study on COP (dated: November 2008, attached) and would offer the following general observations:

1. Prohibiting COP in the Recreation Future Land Use category could have some potentially unintended consequences, such as prohibiting COP for special events at City or County Parks, including Bowditch Park, Newton Park, Mound House, Lynn

Hall Park and Bay Oaks Park. Also, in the instance of the Mound House, there was a CPD (05-13) allowing COP, with conditions, as a permitted use in the Recreation Future Land Use category.

2. An interpretation that specific uses are precluded in any particular land use category could present challenges for similar ancillary related uses in a broader overall use category. For example, in Recreation we presently allow a broad spectrum of quasi-retail/recreational ancillary uses, such as parasailing and jet skis. It is possible that these legitimate uses could be challenged if Council's interpretation is that COP, which is also a quasi-retail/recreational ancillary use, is precluded in the Recreation Future Land Use category.
3. While the Consultant's study on COP (dated: November 2008) provided the policy analysis for concluding that COP is not a permitted use in the Recreation Future Land Use category, our analysis of broader policies concluded that there is sufficient policy latitude to declare it as either a permitted use or not a permitted use or a permitted use (accessory/ancillary or Special Exception use) that should be limited to specific areas, such as Times Square and/or other areas.
4. The Recreation Future Land Use category only really speaks with definitive limitation to one use and that is "new" residential development, which the policy (4-B-8) specifically states, "No new residential development is permitted." In this regard, we would urge caution about reading more into the policy language than is really there and that the Land Development Code may be the more appropriate place for regulating or making such determinations on specific uses. Land use categories, in general terms, are intended for establishing broader ranges of uses and when they seek to prohibit a specific use (such as "new" residential), it is typically found in specific language in the policy, as is the case for the residential prohibition in this very policy. Also, while COP as a use, may, in some instances be considered a primary use, often it is more typically classified as an accessory/ancillary or Special Exception use. In general terms, Comprehensive Plan policy language is not intended to drill down to this level of specificity, but deals with uses in broader contextual terms, as was the instance in the prohibition of "new residential" in the Recreation Future Land Use category.

Comprehensive Plan/Policy Analysis:

In order to provide you with some basis for making your decision, we have analyzed some specific policies (in addition to those policies analyzed in the Consultant's Study on COP) and broader language from the Comprehensive Plan, for your consideration:

1. Here is some select narrative language from the Future Land Use Element which may provide some insight into intent, as it speaks of Times Square in terms of being an "Urban Beach environment." Also, it speaks of it in terms of "intense commercial activities." "Lynn Hall Park has more recreational facilities and remains the most lively and popular beach in Lee County."

Analysis: The narrative contemplates a more vibrant downtown, which could be construed to suggest a more intensive mix of uses and a more permissive view of the overall range of uses.

2. Goal 4: To keep Fort Myers Beach a healthy and vibrant “small town” while **capitalizing on the vitality and amenities available in a beach-resort environment** and minimizing the damage that a hurricane could inflict.

Analysis: The goal suggests that while maintaining the small town character, there is an acknowledgement of the tourist destination nature and hence the range of amenities that make the beach a desirable destination for tourists.

3. Policy 4-A-8: The town shall establish clear and consistent rules and processes that govern private and public development. They shall be incorporated into a graphic Land Development Code that: i. illustrates permitted uses and dimensions needed to implement this comprehensive plan; iii. Resolves inconsistencies between current zoning and land development regulations and this comprehensive plan...

Analysis: In Staff's view, this policy suggests that the LDC is the more appropriate venue to determine the appropriateness of specific uses. In the case of COP, Council may deem it more appropriate to consider it an accessory/ancillary or Special Exception use to another primary use.

4. Policy 4-B-8: “RECREATION”: applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf Beaches that lie seaward of the 1978 coastal construction line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. **No new residential development is permitted** (although several existing buildings were legally constructed seaward of the 1978 control line). The maximum density of residential development here is one unit per 20 acres, with all units constructed outside this category. **Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities.**

Analysis: The policy contemplates a specific prohibition of “new residential” as a broad range of potential primary uses and remains silent with respect to allowable accessory/ancillary uses. However, the policy does establish bathing beaches as a primary use, which then provides Council the latitude to interpret the accessory/ancillary uses, be it through the Comprehensive Plan or the Land Development Code.

5. Objective 3-D: **TIMES SQUARE** — Stimulate the revitalization of the downtown core area (near Times Square) as the nucleus of commercial and tourist activities.

Policy 3-D-1: The town shall create a Downtown Redevelopment Agency to assist the Main Street program in revitalizing downtown as a lively, inviting, comfortable, and safe public environment.

Analysis: The objective and policy contemplate Times Square as a nucleus of commercial and tourist activities, supporting the concept of a broader range of more intensive urban uses and uses supportive of tourism.

6. Policy 4-B-6: "PEDESTRIAN COMMERCIAL": a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard) and the area around the Villa Santini Plaza. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for affordable units consistent with the adopted redevelopment plan). Commercial activities must contribute to the pedestrian-oriented public realm as described in this comprehensive plan and must meet the design concepts of this plan and the Land Development Code. Where commercial uses are permitted, residential uses are encouraged in upper floors. All "Marina" uses in Policy 4-B-7 are also allowed on parcels that were zoned for marinas prior to adoption of this plan. Non-residential uses (including motels and churches) now comprise 58.9% of the land in this category, and this percentage shall not exceed 90%.

Analysis: The policy contemplates more vibrant activity centers, suggesting these nodes and the ranges of uses may be broader and more intensive than in other areas.

7. Policy 5-D-1: The town's policies on shoreline protection measures shall be as follows (see also Objective 5 and related policies in the Conservation Element of this plan):
 - i. Beach renourishment will be necessary along much of the Gulf beach. The long-term recreational and economic benefits will offset the cost. The town shall work closely with Lee County, which has agreed to take the lead role in carrying out this important activity. All practical measures shall be taken to ensure that beach renourishment improves sea turtle nesting habitat rather than interfering with it. Public access to existing and renourished beaches is an important priority of the town of Fort Myers Beach.
 - ii. Sand dunes should be protected and re-created wherever they have been removed. Native dune plants should be protected and non-native exotics removed. Dune walkovers should be constructed where they do not exist and existing structures should be maintained.
 - iii. The use of vehicles on any part of the beach should be severely limited in accordance with Conservation Policy 6-E-4(iv).
 - iv. **Buildings and other structures should be located as far away from the shoreline and dune system as possible since the beach is a constantly changing environment.** Beachfront development shall be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment rather than by seawalls or other hardened structures, which tend to hasten beach erosion, interfere with public access, and block sea turtle nesting.
 - v. Development (other than minor structures) shall not be allowed seaward of

the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

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

vii. The absolute last resort for shoreline protection is the use of hardened structures (except that terminal groins may be permitted at inlets if acceptable to state and federal permitting agencies). New beachfront buildings requiring seawalls for protection from coastal erosion shall not be permitted.

Analysis: The policy establishes the importance of protecting beaches as a natural resource and contemplates the impact of development (i.e. buildings), but is silent on the impact of uses.

8. LEGISLATIVE INTERPRETATIONS

In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the Town Council which adopted the plan be understood and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document, which can be a companion to the plan itself.

A. Requests. Requests for interpretations may be made by any Town Council member, the Town Manager, the Local Planning Agency, or any applicant for a type of development regulated by this plan.

B. Local Planning Agency. Upon receiving a request and written recommendations from the Town Manager, the Local Planning Agency shall review the same and forward them to the Town Council with its comments and recommendations.

C. Town Council. Upon receiving the recommendations of the Local Planning Agency, the Town Council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the Town Council, and, upon being reduced to a board resolution drafted in response to the board majority, it shall be signed by the Mayor and recorded in the town's official records. The Town Clerk shall be responsible for maintaining copies of all such resolutions in a single document, which shall be appropriately indexed and provided to all persons upon request.

The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

D. Legal Effect of Legislative Interpretations. Any provision of the plan specifically construed in accordance with the foregoing procedures may not be reinterpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the annotation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of Section 163.3215, Florida Statutes.

Analysis: The interpretation provisions contemplate the full legal effect, which includes a requirement that any subsequent interpretation of a previous interpretation can only be accomplished through a Comprehensive Plan Amendment.

Conclusion/Recommendation:

While Staff is inclined to support the more defensible policy interpretation of Option 3 identified in the Executive Summary, wherein the Land Development Code is the more appropriate place to interpret this specific use, we acknowledge that this important interpretation is ultimately a potentially important basic community character standard and the policy language provides a fair degree of latitude to accommodate the range of potential interpretations outlined in the Executive Summary.

Further, should Council decide on Option 3, Staff is confident that code language can be promulgated to provide a more definitive framework for dealing with future uses. For example, future COP in Recreation could be limited to specifically established and/or geographically defined areas, such as Times Square and/or established larger resort destinations, with appropriate conditioned restrictions. Also, Council would retain the option to further restrict the future expansion of COP uses on the beach or not allow it at all. Also, the policy framework could acknowledge previously conveyed and/or established rights, while setting more consistent standards on future uses. Last, dealing with COP in the Land Development Code would allow Staff to develop a more comprehensive regulatory framework encompassing a broader range of COP issues in a more consistent manner.

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2011-0083

1. Requested Action:

Meeting Date: August 1, 2011

Status report to Town Council on progress of COP Ordinance to implement Council's interpretation of LPA Resolution 2009-0024.

Why the action is necessary:

None required. This status update is provided for informational and discussion purposes.

What the action accomplishes:

To provide Council with an update on the work effort to date, as well as the proposed project timeline.

2. Agenda:

☐ Consent
☒ Administrative

3. Requirement/Purpose:

☐ Resolution
☐ Ordinance

4. Submitter of Information:

☐ Council
☒ Town Staff - Comm Dev

5. Background:

On November 10, 2009, a report, titled "Policy Considerations and Options: Consumption of Alcoholic Beverages" was presented to the LPA for their consideration. The report was commissioned by a former Town Manager and prepared by the former Community Development Director. In regards to the issue of COP on the Gulf Beaches, the report concluded, "The Plan does not clearly provide for the expansion of permitted COP onto the Gulf beaches, neither does it clearly prohibit it." At that LPA Meeting, as memorialized in LPA Resolution 2009-24, the LPA voted 5 to 1 to recommend that the Comprehensive Plan: "does restrict further expansion of on-premises consumption of alcoholic beverages on the Gulf beaches within the Town of Fort Myers Beach." The net effect of this opinion on the part of LPA was to recommend to Town Council, in the form of a Legislative Interpretation (as provided for in Chapter 15 of the Plan) that it was the intent of the Plan to further restrict the expansion of COP in the Recreation Future Land Use category.

At the December 6, 2010 Town Council Meeting, Council voted 4 to 1 to reject the LPA's Resolution and by rejecting the LPA's motion. Further, in a subsequent motion and discussion, Council determined that the Land Development Code was the appropriate place to identify more specific permissible uses and directed Staff to prepare an ordinance regulating COP in EC.

The attached memo provides a progress report on the development of a COP Ordinance and the Local Planning Agency's efforts to date. Further, it provides the proposed project timeline, based upon Staff's interaction with the LPA to date and the remaining work effort required.

6. Alternative Action: N/A

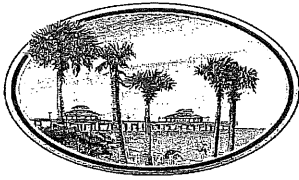
7. Management Recommendations: N/A

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other



Town of Fort Myers Beach

Memorandum

To: Mayor and Town Council

Through: Terry Stewart, Town Manager

CC: Marilyn Miller, Town Attorney

From: Walter Fluegel, Community Development Director

Date: 07/20/2011

Re: Progress Report on COP Ordinance

The attached memo provides a progress report on the development of a COP Ordinance and the Local Planning Agency's efforts to date. Further, it provides the proposed project timeline, based upon Staff's interaction with the LPA to date and the remaining work effort required.

Background Information:

On November 10, 2009, a report, titled "Policy Considerations and Options: Consumption of Alcoholic Beverages" was presented to the LPA for their consideration. The report was commissioned by a former Town Manager and prepared by the former Community Development Director. In regards to the issue of COP on the Gulf Beaches, the report concluded, "The Plan does not clearly provide for the expansion of permitted COP onto the Gulf beaches, neither does it clearly prohibit it." At that LPA Meeting, as memorialized in LPA Resolution 2009-24, the LPA voted 5 to 1 to recommend that the Comprehensive Plan: "does restrict further expansion of on-premises consumption of alcoholic beverages on the Gulf beaches within the Town of Fort Myers Beach." The net effect of this opinion on the part of LPA was to recommend to Town Council, in the form of a Legislative Interpretation (as provided for in Chapter 15 of the Plan) that it was the intent of the Plan to further restrict the expansion of COP in the Recreation Future Land Use category.

At the December 6, 2010 Town Council Meeting, Council voted 4 to 1 to reject the LPA's Resolution. In a subsequent motion and discussion, Council determined that the Land

Development Code was the appropriate place to identify more specific permissible uses and directed Staff to prepare an ordinance regulating COP in EC.

This memo provides a progress report on the development of a COP Ordinance and the Local Planning Agency's efforts to date. Further, it provides the proposed project timeline, based upon Staff's interaction with the LPA to date and the remaining work effort required.

Attachments:

Exhibit A-LPA Meeting minutes from January, 2011 through June, 2011.

Exhibit B- April 4, 2011 LPA memo and material on COP

Exhibit C- May 4, 2011 LPA memo and material on COP

Exhibit D- June 9, 2011 LPA memo and material on COP

Exhibit E- July, 2011 LPA back-up information

Timeline:

1. January 11, 2011 LPA Meeting

-At the January Meeting, during the Community Development Director's Report, Staff provided the LPA with an update on the status of Town Council's December 6, 2010 Action on LPA Resolution 2009-0024 and that Council had rejected the LPA's recommendation. Further, it was indicated that Staff would prepare an ordinance to deal with COP in EC, but there was no formal timeline at this point. The LPA Chair advised, "when it does come before the LPA, they will need a very thorough presentation with all the needed information."

2. January to April, 2011 COP Work Effort

-From January to April, Community Development Department Staff monitored COP in the EC during Spring Break. The nature of the monitoring, was to observe and learn, in order to develop an understanding of the potential issues and to develop some initial regulatory concepts. In the end of March, Staff drafted a conceptual working ordinance on one approach to regulating COP in EC. The purpose of this working draft was to facilitate a discussion at the April LPA meeting.

3. April, 2011 LPA Meeting

-Staff presented to LPA a preliminary working draft of one conceptual approach to regulating COP on the beach for existing establishments and a conceptual approach for regulating new establishments through the Special Exception Process. The purpose of this workshop, from Staff's perspective was to focus on regulatory requirements (i.e. standard conditions of approval that would be

applied to all existing or future establishments with COP in EC), such as hours of service, signage, restricting the movement of alcohol from one property to another, environmental standards (such as bio-degradable plastic cups with the establishments name on the cup), maintenance requirements (including maintaining the beach free of litter and debris) and terms of revocation of the extension of premises. The transmittal memo was very clear that this was intended to be a working draft and that the discussion was meant to be a workshop discussion. Further, the transmittal memo was clear that Staff was looking for input on procedural approaches and regulatory standards. A copy of Staff's memo to LPA and working draft ordinance is provided in Exhibit B.

At this meeting, several LPA opined that they were opposed to COP in EC and expressed their intent to recommend denial of any ordinance that proposes allowing COP in EC. Further, the LPA's discussion focused heavily on the Comprehensive Plan interpretation. Staff reminded the LPA that Council had rejected the LPA interpretation and accordingly, the conversation needed to focus on the Land Development Code. Further, the LPA opined that they would need much more information than was provided, without providing neither specific details nor a consensus on the information necessary.

4. May, 2011 LPA Meeting

-Based upon LPA input at the April LPA meeting, Staff prepared a more comprehensive summary of the overall COP issue, with specific focus on the LPA's prior Comprehensive Plan interpretation and Town Council's rejection of that interpretation. A copy of Staff's memo to the LPA is provided as Exhibit C. The memo included a summary of Council's rejection of the LPA's Comprehensive Plan interpretation on COP, a summary of potential regulatory approaches, an overview of Staff's concerns about the need to establish a regulatory framework for COP, a summary of potential conditions of approval/regulatory requirements, a copy of Jerry Murphy's report, "Policy Considerations and Options: Consumption of Alcoholic Beverages," a copy of LPA Resolution 2009-24, a copy of Staff's November 8, 2010 memo on COP in REC Future Land Use and an inventory of existing licensed COP establishments adjacent to the EC Zoning District.

At this meeting the LPA Chair presented her May 10, 2011 memo (included in Exhibit D), "COP Expansion In The Environmentally Critical Zone/Recreation FLUM." The memo outlined the Chair's analysis that the Code prohibits expansion of COP in EC. Also, Commissioner Ryffel presented a memo outlining alternative approaches to regulating COP in EC by allowing consumption, but not service (Exhibit D).

The meeting started off with the Town Manager addressing the LPA on the importance of crafting a well thought out and comprehensive COP ordinance to

address the current lack of any regulatory requirements on the existing establishments with COP in EC.

Staff then presented a summary of Staff's memo. During public input, the owner of Nemo's expressed a need for a level playing field that provide a fair standard. Three members of the public expressed opposition to expansion of alcohol on the beach.

The LPA Chair presented her memo on COP in EC and iterated her belief that the Land Development Code prohibits it. Commissioner Ryffel presented his alternative approach to allowing consumption in EC, accessory to permitted establishments. In the discussion of this alternative approach, it appeared that there were two emerging camps on the LPA, with some in favor of recommending denial of any ordinance to deal with COP in EC and the other camp leaning towards favoring Commissioner Ryffel's alternative approach.

5. June, 2011 LPA Meeting

-Based upon LPA input at the May LPA meeting, Staff prepared a workshop discussion (Exhibit D), which included reviewing the LPA Chair's Memo regarding her interpretation of COP in EC/REC. Further, the conversation focused on an alternative regulatory approach proposed by Commissioner Ryffel. The memo outlined the potential regulatory approaches and conditions of approval/regulatory requirements. At this meeting LPA expressed an interest in dual LPA Resolutions, including one that expressed their opposition to COP in EC. Also, it should be noted, that other than Commissioner Ryffel's attempt to introduce a new regulatory approach, the LPA provided no direction on regulatory approaches nor conditions of approval/regulatory requirements. Staff's preliminary review of Commissioner Ryffel's approach has been deemed to warrant merit for further consideration as one of the potential regulatory approaches. LPA expressed concerns about the potential for Burt Harris claims arising from Lani Kai and Top O Mast. Staff reviewed the problem created by the initial creation of the EC Zoning District, in that it bifurcated properties into two zoning districts. Further, the Chair focused on the vested rights of existing establishments.

Again, some LPA members expressed a preference towards an outright prohibition on COP in EC. Staff reminded LPA that they can forward dual resolutions, with one expressing their desire for prohibition and another providing their input on potential regulatory approaches. Staff again emphasized a need to receive input from LPA on potential regulatory approaches.

Based upon the lack of clear consensus and the Chair's belief that the Land Development Code prohibits COP in EC, Staff embarked upon a comprehensive review and legal assessment of all approved COP's adjacent to EC, in order to identify any consistency of regulatory requirements. Further, Staff believed that given the Chair's memo, it would be beneficial to review previously approved COPs for policy interpretations and precedents in those approvals to verify the validity of her interpretation.

6. July, 2011 LPA Meeting

-At the July Meeting, Staff presented a timeline of COP regulations, dating back to the County requirements, starting in the 1970's to current Town requirements. Further, the inventory of all beachfronts COP's discovered 9 establishments wherein COP had been granted by either the Town or County in the EC Zoning District. Exhibit E provides a timeline for all applicable County and Town ordinances dealing with COP and an exhibit depicting the impact of the EC Zoning District on bifurcating properties between two zoning districts. It should be noted that the initial assessment of these 9 previously approved COPs, indicates that there was substantial policy consideration given to approving COP in EC, with some of these approvals. For example, some of these COP's were approved by Special Exception, subsequent to the incorporation of the Town and the approving resolutions gave specific contemplation to the fact that the COP use was being approved over the EC zoning line. In essence, Staff is reviewing these in more depth for the policy precedent they provide.

Based upon the more comprehensive requirements to identify, assemble and conduct thorough assessments of the legal standing previously granted COP approvals (State Licenses, Town approvals and County approvals prior to incorporation), Staff proposed a major revision to the project schedule, in order to allow Staff adequate time to research and prepare a comprehensive study of previously granted approvals.

Staff's current work effort is focused on acquiring all documentation of previously approved COPs, including a review of all meeting minutes. Reviewing County and Town ordinances/resolutions regulating alcohol and meeting minutes. This effort will include a review of changes in state alcohol regulations. Further, the effort will include additional public records requests from the State Division of Alcohol, Beverage and Tobacco and possibly Lee County.

7. Proposed COP Ordinance Development Timeline

-Based upon the intensive time and research requirements, Staff has modified the Ordinance Development Timeline, as follows:

June through August, 2011-Research and prepare comprehensive study of previously approved COPs and legal standing of each, along with policy implications of previous approvals.

September, 2011-Present report to LPA and discuss regulatory approaches/requirements.

October, 2011- LPA Workshop on Draft COP Ordinance.

November, 2011- LPA Public Hearing on COP Ordinance.

December, 2011-Town Council Introduction and Public Hearing on COP Ordinance.