

Application #: 2008-04-TEXT

Description: Clarify Policy 4-E-1 to maintain the original intention of pre-disaster buildback and to provide additional incentives

[This amendment could either refer more explicitly to its intention to provide the same rights as for post-disaster buildback, or it could simply state that the physical size or interior square footage of a building may not be increased during the pre-disaster buildback process. It would also clarify that large condominium buildings cannot be substituted for existing hotels and motels in the guise of buildback; they could still replace older hotels or motels, but the new structures would have to meet today's more restrictive density cap. At the same time, the town could consider additional incentives for pre-disaster buildback beyond those already in the comprehensive plan]

Pages to be changed: Comprehensive Plan Pages 4-18–4-18a and 4-52 (proposed changes are attached)

Discussion in E/A Report From Pages 11– 14:

(adopted on Jan 16 '07):

“One of the important innovations of the comprehensive plan was the "pre-disaster buildback policy." Before 1999, owners of over-density buildings were allowed to rebuild their existing square-footage only if their buildings were destroyed by a natural disaster. A goal of the new plan was to allow the upgrading or replacement of these "grandfathered" structures without awaiting their destruction by natural causes (see Objective 4-E). Policy 4-E-1 was also added to the plan in 1999 to begin carrying out this goal:

“POLICY 4-E-1: PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it at up to the existing lawful density and intensity prior to a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land use and design policies, pedestrian orientation, and natural resource criteria.

“Policy 4-E-1 does not define the word "intensity" in this policy nor does it go into detail about intensity as did the older "post-disaster buildback policy," which said that grandfathered buildings "...can be rebuilt to their legally documented actual use, density, intensity, size, and style..." During the past two years there has been extensive public discussion as to whether Policy 4-E-1 necessarily limits the reconstruction of over-density buildings to their current physical size.

“Perhaps the most authoritative reference in the planning field defines "intensity of use" as follows: "The number of dwelling units per acre for residential development and floor area ratio (FAR) for nonresidential development, such as commercial, office, and industrial." This definition is followed by this comment: "FAR

may also be used for residential development or for mixed-use development. In residential projects, FAR may be useful in relating the size of the building to the lot area." In the buildback context, the lot area doesn't change, so this definition would measure intensity by the physical size of the building for nonresidential development and sometimes would also measure intensity the same way same for residential or mixed-use development.

"The town can of course use definitions of its own choosing. The Land Development Code now interprets the pre-disaster buildback policy in a manner similar to this reference book and in the same manner as the post-disaster buildback policy by not allowing over-density buildings to be further enlarged during the pre-disaster buildback process. The actual land development code language for the square footage for pre-disaster buildback is identical as for post-disaster buildback.

"The current evaluation of the Fort Myers Beach Comprehensive Plan allows the town a chance to reconsider its pre-disaster buildback policy. The current interpretations of the policy have been challenged as being unduly restrictive because of the "no enlargement" rule. If over-density buildings were allowed to be enlarged during the buildback process, it would be a considerable incentive for property owners to demolish existing buildings to take advantage of this size increase. The new buildings would meet most current codes even if the existing buildings did not. In some cases, the new buildings would be designed for and marketed to seasonal residents instead of year-round residents or tourists, which might even decrease impacts on public services such as roads/water/sewer and private services such as restaurants.

"Most public discussion on this subject has centered around the vagueness of the term "intensity" in Policy 4-E-1. Property owners have argued that their over-density buildings should be allowed to be demolished and enlarged, sometimes several times over, provided there are some measures of intensity which would be held constant or reduced.

"However, the policy issues are much broader than what the drafters of Policy 4-E-1 meant by the term "intensity." For instance:

“ ■ GEOGRAPHICAL EFFECTS: Discussions of intensity have centered mostly on water and sewer impacts and on road impacts. Although water and sewer impacts would be the same regardless of where a building is located, road impacts could differ greatly. For instance, a hotel that is isolated from commercial and recreational services would generate many more vehicular trips than the identical hotel within walking distance of those same services. In addition, some types of commercial development primarily serve those who are already on the island, actually reducing travel demand by eliminating some off-island vehicular trips.

“ ■ SEASONAL EFFECTS: Traffic congestion is extreme throughout the winter (and also during holidays, weekends, and special events). Replacing motels with housing for seasonal residents may reduce total yearly vehicular trips, but seasonal residents tend to use their dwelling during the periods of greatest congestion; their absence during non-peak periods does not aid in reducing actual congestion.

“ ■ ECONOMIC EFFECTS: The economy of Fort Myers Beach is based on tourism. Although tourism is sometimes overwhelming to permanent residents, tourism also provides benefits to residents, including

investment opportunities, employment, recreational opportunities, and choices for dining and entertainment that are far beyond what would be available if they were serving the resident population alone. Many residents have chosen to make Fort Myers Beach their home for these very reasons. Eliminating hotels, motels, and condominiums or timeshares that are available for short stays could have effects on the local economy far greater than reductions in intensity as measured by, say, water or sewer consumption.

“These policies issues don't suggest that the town needs to change course on pre-disaster buildback. In fact, the original reason for the present course was to give property owners for the first time the same rights to rebuild at leisure that they would have had only after a natural disaster. Granting greater rights to rebuild had never been considered for either pre-disaster or post-disaster buildback, for the simple reason that owners of over-density buildings already had greater rights than all other property owners at Fort Myers Beach. Past over-building caused today's current strong development restrictions, which fall most heavily on owners of vacant or lightly-developed properties such as single-family homes. If Fort Myers Beach were able to accommodate additional development, it would hardly be fair for property owners who are burdened by today's restrictions to continue under those restrictions while other owners who already have over-density buildings are granted additional rights.

“Members of the public who attended the April 7, 2005, workshop were requested to give their opinion on how the town should treat the rebuilding of "over-density" buildings. Five choices were set forth with a request to select one choice. This was not a scientific survey or poll but does give some idea of community sentiment on this and other difficult questions. The written responses that evening were as follows:

Density Limitations for Buildback of Older Building: Should the Town...

- 19 *Encourage* rebuilding of over-density buildings (older buildings that exceed today's density limits) by allowing their replacements to be larger than the existing buildings?
- 30 *Allow* rebuilding of over-density buildings but do not allow them to become larger?
- 12 *Discourage* rebuilding of over-density buildings by requiring density and/or size to be reduced?
- 11 *Forbid* rebuilding of over-density buildings; all new buildings would have to meet the town's current density rules?
- 1 [no answer provided]

“In order to maintain the original intention of pre-disaster buildback, Policy 4-E-1 should be amended for clarity. This amendment could either refer more explicitly to its intention to provide the same rights as for post-disaster buildback, or it could simply state that the physical size or interior square footage of a building may not be increased during the pre-disaster buildback process.

“If the town wishes to provide incentives for pre-disaster buildback beyond those already established in the comprehensive plan, the following concepts could be explored:

“Additional Incentive #1: In areas designated "Pedestrian Commercial" on the future land use map, dry-floodproofed commercial space below elevated buildings could be considered a bonus that would be permitted in addition to replacing the previous building's interior square footage.

“Additional Incentive #2: Instead of limiting pre-disaster buildback to the existing interior square footage, additional square footage could be permitted by the Town Council under certain conditions. For instance, up to a 5% increase over the existing square footage might be approved for each of the following:

- Rebuilding proposals that will operate as a hotel, motel, or resort.
- Replacement of hotel or motel rooms that are less than 400 square feet each.
- Rebuilding proposals that provide a fixed percentage of the project as public open space.
- Rebuilding proposals of exceptional architectural merit.
- Rebuilding proposals for commercial buildings that would dedicate the extra square footage to employee housing.
- Replacement of existing buildings of any type whose total size is less than one-half the floor-to-area ratio that would be allowed for a new building on that site.

Action by LPA: During a public hearing on May 20, 2008, the LPA on a 5–2 vote recommended that the Town Council approve these changes as proposed in this report:

- Changes to Page 4-18 (and 4-18a) of the narrative in the Future Land Use Element, but not including “Additional Incentive #2” on Page 4-18a
- Changes to Policies 4-E-1 of the Future Land Use Element, but not including subsection ii

The LPA’s recommended changes to the original proposal are indicated by ~~struck-through~~ text on the following pages. Joanne Shamp and Bill Van Duzer dissented from the motion. ~~The minutes of the public hearing are attached.~~

Action by Town Council: During a public hearing on November 17, 2008, the Town Council voted 3 to 2 to transmit a revised version of this amendment for state review, as shown on the following pages.

DCA Objection: None

DCA Recommendation: None

Response to DCA: N/A

Proposed Final Action: The Town Council should adopt the transmitted amendment, as described above, as part of Ordinance 09-03.

Final Action: The Town Council adopted this amendment on August 17, 2009, as part of Ordinance 09-03. (Text shown in red is new or has changed since the initial transmittal of this amendment in January 2009.)

POST-DISASTER REDEVELOPMENT POLICIES

When a passing hurricane destroys part of a community, difficult rebuilding questions arise immediately. Landowners have spent thousands and sometimes millions of dollars in developing their property. Not allowing landowners to rebuild would place a great economic burden upon them. But allowing redevelopment in the same manner might expose it to destruction in the next big storm.

Current Build-Back Policy

The current comprehensive plan contains a “build-back” provision initiated by Lee County in 1989 that allows post-disaster reconstruction at existing density levels, but requires improved resistance to future storms. This provision has been popular among landowners at Fort Myers Beach because of the greatly reduced density levels that would otherwise apply after a major storm. However, it falls far short of a redevelopment plan that would ensure that the community would be improved in other ways during the inevitable rebuilding process.

If a disaster strikes, structures that comply with all current regulations could of course be rebuilt in exactly the same form. However, many buildings at Fort Myers Beach do not comply with current regulations, particularly the maximum density level of six dwelling units per acre. When one of these structures is damaged greater than 50% of its current value, the build-back policy allows it to be rebuilt, but instead of meeting *all* current regulations, the new building can include the original number of dwellings and square footage. But it must meet all current flood, structural, and coastal setback requirements. The lowest floor level must be elevated; land uses are severely limited on the ground level; and break-away walls may be required. (Height and setback requirements might even be waived if needed for the building to comply with the new flood and structural requirements.)

One problem with the build-back policy is its limitation to post-disaster situations (such as floods, wind damage, or fire). Federal and state policy has been shifting in recent years to pre-storm mitigation of known hazards, instead of waiting for disasters to occur (as discussed in the previous section). The current policy is as inflexible in this regard as the National Flood Insurance Program.

Other possibilities for improving the build-back program in the future include:

- Mandating improved building form during the rebuilding process (some examples might be maintaining view corridors to the Gulf of Mexico, or allowing some mixed uses in residential-only towers, or placing buildings nearer the street).
- Allowing density transfers during the rebuilding process if they meet some stated public purpose.
- Creating a registry of pertinent building details (such as exact heights and exact building footprint on the ground) so that permitting would be eased in a post-disaster situation;

Modified Build-Back Policy

This plan makes one immediate change in the build-back policy. Owners of existing buildings that exceed the current density or height limits would no longer be categorically forbidden from rebuilding; they will be offered an opportunity to replace the building for the same use at up to the existing density and intensity (up to the original square footage, as already provided for post-disaster build-back) without waiting for a natural disaster (see Policy 4-E-1). Owners would request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The Town of Fort Myers Beach would approve, modify, or deny this request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria.

The town could also provide additional incentives for “pre-disaster” build-back. For instance in areas designated “Pedestrian Commercial” on the future land use map, dry-floodproofed commercial space below elevated buildings could be considered a bonus that would be permitted in addition to replacing the previous building’s interior square footage. Policy 4-E-1 was modified in early 2009 to allow this additional incentive.

ering, open space, side setbacks, etc.) to minimize the need for individual variances or compliance determinations prior to reconstruction. The Land Development Code may also establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.

OBJECTIVE 4 -E HAZARD MITIGATION — Mitigate the potential effects of hurricanes by easing regulations that impede the strengthening of existing buildings, by encouraging the relocation of vulnerable structures and facilities, and by allowing the upgrading or replacement of grandfathered structures without first awaiting their destruction in a storm.

POLICY 4-E-1 PRE-DISASTER BUILDBACK POLICY: Owners of existing developments that exceed the current density or height limits may also be permitted to replace it for the same use at up to the existing lawful density and intensity (up to the original square footage) *prior to* a natural disaster. Landowners may request this option through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such a request based on the conformance of the specific proposal with this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. The Town

POLICY 4-E-2

Council may approve additional enclosed square-footage only if an existing building is being elevated on property that allows commercial uses; dry-floodproofed commercial space at ground level could be permitted in addition to the replacement of the pre-existing enclosed square footage.

COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development. Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. (Exceptions must also comply with all state laws and regulations regarding coastal construction.)