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MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: February 24, 2003
SUBJECT: Ordinance Adopting LDC Chapter 34
(Final Public Hearing, March 3, 2003, 6:30 PM)

The final public hearing to consider an ordinance that would adopt a new Chapter 34 into the new Land Development Code is scheduled for March 3 at 6:30 PM.

You were previously provided with a complete draft of this ordinance that was dated December 17, 2002. (Additional copies can be obtained at Town Hall or downloaded from www.spikowski.com/beach.htm) Additionally, you have received memos from me dated January 5 and January 27 that recommended specific changes to the December 17 draft.

This memo incorporates all the specific changes from the January 5 and January 27 memos and provides a number of additional changes. This memo reorganizes all of these changes into two groups:

1. The first group contains all the changes that are fairly routine (see #1 through #15 below). This group can be handled like a consent agenda at the public hearing, with discussion limited to only those items that a member of the Town Council removes from this group.
2. The second group contains the remainder of the changes, including every change where alternative language has been proposed (see #16 through #24 below). The Town Council should address every item in this second group after taking public input.

The Town Council also needs to address any other items in Chapter 34 with which they have any concerns. After decisions have been made on all of these items, the ordinance can be adopted reflecting all of those decisions.

GROUP ONE — ROUTINE CHANGES

1. **Ordinance No. 03-__**: The final version of the first five pages of the ordinance (including its title and Sections 1 through 8) is dated March 3, 2003. This version should replace the December draft. A copy is attached to this memo as Attachment A.
2. **Definition of Building (§ 34-2)**: This definition had not been changed from the previous Lee County language. It specifically listed tents, awnings, and cabanas, but there is no apparent reason to do so. The following change should therefore be made to this definition (shown here with shadowed text):

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This definition shall include ~~tents, awnings, cabanas, or~~ vehicles situated on private property and serving in any way the function of a building, but does not include screened enclosures not having a roof impervious to weather.

3. **Definition of Contractor's Shop (§ 34-2)**: This definition is missing the word "not" in the third line. The following change should be made to this definition (shown here with shadowed text):

Contractor's shop means a room or group of rooms used by a contractor for the custom fabrication of building-related products such as, but not limited to, air conditioning duct work, pool screen enclosures, door trim, etc., and for the interior storage of materials, but which does ~~not include perform~~ any exterior fabricating or use any exterior storage area. Specifically prohibited is the storage or parking of heavy construction equipment such as cement trucks, cranes, bulldozers, well-drilling trucks and other similar heavy equipment, or wrecking or demolition debris.

4. **Definition of Existing Only (§ 34-2 and 34-621(b))**: This definition was being changed to mirror the change that Lee County made after the town incorporated. The term "existing only" is similar to a "nonconforming use" but is a preferred status because it allows the complete replacement of the use, without the limits that are placed on nonconforming uses. The term "Existing only" is used in the new Chapter 34 for owner-occupied accessory apartments, the Bay Beach golf course, existing marinas, and for mobile homes and recreational vehicles in the VILLAGE zoning district. For improved clarity, the following changes should be made to this definition in § 34-2 (words that are being changed from the December 17 draft are shown here with shadowed text):

Existing only. ~~When used following a listed permitted use, the term "existing only" shall mean a building, structure or use which lawfully existed on the effective date of the ordinance from which this chapter is derived (August 1, 1986). When this term (or its abbreviation EO) is used in Table 34-1, it describes a specific land use that is permitted only if that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations, on the parcel which existed on August 1, 1986.~~

~~The use is permitted only if it lawfully existed on September 27, 1993, or was granted a special exception within the two years prior to that date and commenced the approved construction within two years after that date. Except for mobile home and recreational vehicle parks, a use that qualifies as “existing only” will not be classified as a nonconforming use; it will be afforded the same privileges as a permitted use and may be expanded or reconstructed, in accordance with all applicable current regulations, but only on the specific parcel on which it is located, as that parcel was legally described on September 27, 1993.~~

A corresponding change should also be made to the description of “EO” in § 34-621(b) as shown in the following text (the previous text is not shown here, but it was similar to the definition in § 34-2):

EO *Existing only.* The use is permitted only if that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.

- 5. Definition of Parking Lot, Shared Commercial (§ 34-2):** In the 12-17-02 draft of this code, the existing definition of “Parking lot, commercial” was retained but renamed as “Parking lot, shared permanent.” This name change was related to a new hierarchy of parking lot types as described in § 34-2011. Since preparing those definitions, I have become aware that one type of parking lot wasn’t properly assigned to this hierarchy: an off-site parking lot that is dedicated to a specific business. That type of parking lot has similar land use impacts to a “shared permanent” parking lot; thus the proposed definition should be modified by adding a new final clause as follows (shown with shadowed text):

Parking lot, shared permanent commercial means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or properties.

During the February 3 public hearing, the Town Council asked what assurances the new code would provide that an off-site parking lot that is dedicated to a single business won’t later be sold off, leaving the business without sufficient parking. There are several scenarios where off-site parking lots are allowed, and the answer to this question differs with each scenario:

- Off-site parking that is shared with another business is allowed through a joint-use parking agreement, which must include a backup plan to provide sufficient parking if the agreement is violated (see § 34-2018).
- Expanded businesses in the Times Square and Bayfront pedestrian plazas must provide off-site parking within 750 feet (§ 34-676(a)(2)). A separate formal agreement is not required, although in the Snug Harbor restaurant case, the required parking was guaranteed through a development order covering both the new restaurant and the off-site parking lot. This method is less secure than a formal agreement, but I believe adequate under the circumstances; if it fails, many businesses can still survive in these pedestrian-oriented locations without dedicated parking spaces.

- All “shared permanent” parking lots require either a special exception or CPD zoning. If such a lot is going to be dedicated to a specific business, the permanence of that arrangement can be evaluated through either of those processes. For instance, if these spaces are required for a specific business, the approval could contain a condition limiting the lot to that purpose, or allowing others to use the lot only when surplus spaces are available. However, if the spaces that are to be dedicated to a specific business are not *required* by the code, there would be little reason to impose such a limitation.

6. Special Exception Criteria (§ 34-88): The LPA recommended deletion of a redundant criterion for approval of special exceptions (formerly in § 34-88(2)j.). The following language should be deleted:

~~j. Whether the request is consistent with the densities, intensities and general uses set forth in the Lee Plan.~~

7. Mandatory planned development zoning (§ 34-620(e)): This subsection lists five types of development that cannot be initiated without “planned development” zoning. The first two items apply to land with “Mixed Residential” or “Boulevard” designations in the comprehensive plan and, as written, might be interpreted to be more restrictive than the new SANTOS or CB zoning districts, or might forbid a hotel in the new CR zoning district from expanding an internal restaurant that cannot be seen from the street. The second item would also be clearer by adding a specific reference to detailed regulations in this code. This subsection should therefore be modified as follows, as shown by the new shadowed text:

(e) Planning development zoning districts are also required by the Fort Myers Beach Comprehensive Plan in the following situations:

- (1) For new or expanded commercial activities other than those permitted by the current zoning district for land in the Mixed Residential category on the future land use map (see Policies 4-B-4 and 4-C-3).
- (2) For new or expanded commercial activities other than those permitted by the current zoning district for land in the Boulevard category on the future land use map (see Policies 4-B-5 and 4-C-3 and § 34-701–34-930).
- (3) For consideration of extra building height in certain circumstances (see Policy 4-C-4 and § 34-631(b)(5)).
- (4) For the transfer of residential and hotel/motel development rights from one parcel to another (see Policy 4-C-8 and § 34-632(6)).
- (5) For guest units that exceed the thresholds established in § 34-1803(a).
- (6) For pre-disaster buildback of buildings that exceed the current density or height limits (see Policy 4-E-1 and § 34-3237).

- 8. Redevelopment zoning districts (§ 34-662(b)):** Because Chapter 10 of this code still has not been completed, there is a possibility during the coming year that some of the buffer requirements in the existing Chapter 10 may conflict with the build-to line requirements in Chapter 34. To resolve that possible conflict, the following language should be added as § 34-662(b)(7):

(7) Build-to line requirements shall take precedence over any buffer or setback requirements imposed by other portions of this code.

- 9. DOWNTOWN zoning district (§ 34-676(e)(2)):** The discussion of liner buildings contains an ambiguity; it should be reworded as follows:

(2) All levels of parking garages must be separated from primary streets and pedestrian plazas by a liner building that provides ~~at least 20 feet of~~ usable building space at least 20 feet deep (see Figure 34-8).

- 10. CB zoning district (§ 34-702(c)):** The CB zoning district is being applied to land with existing commercial uses that are in the “Boulevard” category in the comprehensive plan. § 34-702 has four subsections that address:

- (a) Continuation of existing commercial uses
- (b) Enlarging or replacing buildings for existing commercial uses
- (c) Enlarging or replacing buildings for all other allowable uses
- (d) New or expanded commercial uses.

The proposed wording for subsection (c) could be misinterpreted and should be reworded as follows (new language shown here with shadowed text):

(c) *Enlarging or replacing buildings for all other allowable uses.* The regulations in this subdivision also apply to the physical enlargement of and replacement buildings for all allowable uses other than existing commercial uses (which are governed by subsection (b)) or new or expanded commercial uses (which are governed by subsection (d)).

- 11. Commercial design standards (§ 34-995(e)(4)):** The section on front porches for commercial buildings (which was adopted in June 2002) contains an error. Subsection b.2. should be corrected as follows:

2. Length: 25% to 90% of the front of the building; however, no more than 25% of the floor area of a porch shall ~~not~~ be screened if the porch extends forward of the build-to line.

- 12. INTERIM ZONING MAP:** The following additional changes should be made to the draft “Interim Zoning Map” dated June 17, 2002:

- A. Water storage tank:** The town now owns the large storage tank at 815 Lagoon Street that holds drinking water (STRAP 24-46-23-W3-0050A.0400). This property is incorrectly shown on the interim zoning map as being zoned into the RC district. The correct zoning district for this property is IN (Institutional), which is the

designation already being applied to the town's other storage tank at 131 Lenell Road.

- B. Wetlands error:** For informational purposes, wetlands are shown on the interim zoning map exactly as depicted on the Future Land Use Map. In Resolution 00-39, the Town Council corrected a wetlands mapping error on the Future Land Use Map for Captains Bay East (STRAP 04-47-24-W1-00002.0040). This same change should be made on the interim zoning map.
- C. VILLAGE zoning district:** There is a slight discrepancy between the VILLAGE district boundary on Figure 34-11 and the interim zoning map. Figure 34-11 is correct; the former Koreshan house on the beach just northwest of the Red Coconut should be shown in the VILLAGE district, not the RM district (STRAP # 30-46-24-W2-00001.0000).
- D. SANTINI zoning district (§§ 34-681–34-683):** A representative of the Santini shopping center and Fish Tale Marina expressed concerns at the LPA hearing about some portions of the SANTINI district and about the timing of completion of the new LDC and how it might affect a pending development application for changes to the marina. The new SANTINI district is primarily concerned about the ultimate redevelopment of the shopping center, but is also worded to allow it to replace the existing CPD on the marina so that a unified redevelopment of both may be accomplished.

Since the LPA hearing, I have reworded a number of clauses in the SANTINI district in a way that resolves the concerns expressed at the LPA hearing and during later meetings. A revised version of §§ 34-681–34-683 was included as an attachment A to the January 27th memo and is also included with this memo as Attachment B. However, despite these changes, the owners of Fish Tale Marina have decided that they are not ready to have the marina rezoned into the new SANTINI district at this time. Thus the new SANTINI district should be applied only to the Santini Plaza shopping center as shown on the draft “interim zoning map,” but not to Fish Tale Marina (STRAP # 03-47-24-W1-00011.0010, 03-47-24-W1-00011.0020, and 03-47-24-W1-00011.003B).

- E. Other Planned development zoning districts:** This map depicted all properties that currently have “planned development” zoning designations (CPD, RPD, MPD, and PUD) with a solid blue outline.

Most of these properties also had a hatched internal pattern (this map's symbol for CPD or RPD zoning), indicating that those properties would keep their planned development zoning after adoption of this map.

However, a number of CPD properties were shown ambiguously on this map, with the solid blue outline but with an underlying zoning district of either

“DOWNTOWN” or “SANTINI.” This ambiguity was intentional because it was not clear at that time whether these properties should retain their CPD status or be rezoned into the DOWNTOWN or SANTINI districts.

Upon consultation with affected landowners, it has become obvious that most wish to retain their existing CPD zoning (mainly due to the investment they have made in achieving that status and their ability to later request rezoning from CPD to another zoning district). However, the representative for one landowner has indicated to me that they would prefer *not* to retain their CPD status, instead having their property regulated the same as surrounding properties. Thus my final recommendation is to *not* rezone planned developments even when that was suggested or implied on the draft “interim zoning map” that will become Exhibit A of this ordinance, except that the Diamondhead parking lot (formerly, the Carslake CPD at 1999 Estero), located on the bay side of Estero just northwest of Virginia Avenue, should be rezoned to “Downtown” (STRAP # 19-46-24-W4-0090B.0020).

An attachment to the January 27 memo identified *all* existing planned developments in the Town of Fort Myers Beach and provided details of each approval. The same document is included here as Attachment C.

13. Definition of Hotel/Motel (§§ 34-1801 & 34-2): Under the 12-17-02 draft of this code, the original definition of hotel/motel would be modified slightly, as follows:

Hotel/motel is defined as means a building, or group of buildings on the same premises and under single control, consisting of ten or more guest units ~~sleeping rooms which are~~ kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests or tenants. ~~Hotels/motels are further categorized as efficiency or business.~~

The Chamber of Commerce questioned the need for keeping the minimum of ten rooms in this definition, and the LPA requested some background research on this issue.

F.S. 509.242 defines “motel” without any minimum size. It also has a definition of “hotel” with a minimum size of 25 guests, but that wording seems to simply require hotels above that size to meet certain state requirements for hotels, thus allowing hotels below that size to be registered and regulated under some different category of public lodging establishment.

Apparently there are a few motels in the town with less than ten rooms and no desire to serve breakfast or have an operator living on-site (which are requirements for bed-and-breakfast inns). These motels probably pre-date zoning and thus may continue in operation, but they are rendered “non-conforming” due to this definition, which restricts their ability to be improved. Also, with the current definition, a small motel-like establishment might be opened in a residential area using the argument that it doesn’t require motel zoning because it is technically not a motel under the LDC’s own definition.

Given these observations, the proposed definition of hotel/motel (which is repeated in § 34-2) should be modified so that the change in definition reads as follows:

Hotel/motel is defined as means a building, or group of buildings on the same premises and under single control, consisting of ten or more sleeping rooms which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer, or tenants. Hotels/motels are further categorized as efficiency or business.

- 14. Conversions of hotel/motel to dwelling units (§ 34-1807):** This section describes the rules for converting a hotel/motel to residential (and vice versa); and the previous section describes how to replace a hotel/motel that is denser than allowed by the current regulations. Neither section mentions what would happen if a landowner wishes to convert an *over-density* hotel/motel to residential. To avoid any ambiguity, new sentences should be added to the end of § 34-1807 as follows (new language shown here with shadowed text):

Any hotel or motel proposing to convert to timeshare or dwelling units, or any residential building proposing to convert to timeshare or hotel/motel units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive ~~Eee~~ Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect ~~chapter affecting~~ the proposed use. If the existing hotel/motel, timeshare, or residential building being converted exceeds the density or intensity limits of the comprehensive plan or this code, the conversion must use the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238 in order to rebuild at up to the existing density or intensity. Interior square footage, as defined in § 34-3238(2)d. for residential and in § 34-3238(2)e for hotel/motel and timeshare, may be exchanged during this process on square-foot for square-foot basis.

- 15. Effect of floor area ratio on buildback (§ 34-3237-3238):** On February 3, a representative for Sunstream, noting the special requirements that limit the interior square footage for over-density buildings that are being replaced, asked if the floor area ratios in Table 34-3 would apply to certain exterior space which is excluded from the buildback limitations. The current wording does not answer this question; the following wording should be added to the end of § 34-3238(2)d.1 and e.1 to avoid any ambiguity:

These excluded spaces are not limited by the floor area ratios in Table 34-3.

GROUP TWO — CHANGES REQUIRING DISCUSSION

- 16. Floor Area Ratios in RS and RC zoning districts (§ 34-642-643):** On February 3 there was considerable discussion of the proposed floor area ratios as they would apply to residential subdivisions. I was asked to prepare language that would eliminate these ratios for the RS and RC zoning districts and reinstate an improved version of the previous measure of intensity (which was called “lot coverage” and was being eliminated from this code).

This could be accomplished through the following changes:

- A. In place of the previous definition of lot coverage in § 34-2, add a reference to a new section of the code that will describe “building coverage,” as follows:

~~*Lot Building coverage. See § 34-634. means that portion of the lot area, expressed as a percentage, occupied by all buildings or structures.*~~

- B. Add a new § 34-634 on page 81 as follows (and renumber existing §§ 34-634-34-637 and all references to those sections accordingly):

Sec. 34-634. Intensity and building coverage.

Another measure of building intensity used in this code is building coverage, which means the horizontal area of all principal and accessory buildings on a site divided by the site’s lot area.

(1) For purposes of this section, horizontal area means the area within the surrounding exterior walls (whether the walls are solid or screened). The term “horizontal area” does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures.

(2) For purposes of this section, a site’s lot area includes the gross square footage within the site’s private property line, minus wetlands, canals, or other water bodies, and minus any land designated “Recreation” on the Comprehensive Plan’s future land use map.

- C. In Table 34-3 on page 89:
- Eliminate the “0.8” floor area ratio (F.A.R.) for the RS and RC zoning districts.
 - Add a new column headed “Building coverage (§ 34-634)”; the only two entries in this column would be “40%” for the RS and RC zoning districts.

17. Outdoor sales in the DOWNTOWN zoning district (§ 34-677(c)(1--2)):

LPA members discussed whether the final draft of the code should include language that might allow outdoor display of merchandise on public property in Times Square and along Old San Carlos. The LPA took no action. To allow the Town Council to consider this possibility, I have drafted the optional language below that could be inserted to allow limited outdoor display of merchandise in Times Square and on the Old San Carlos sidewalks.

Also, although this section no longer allows non-food vending carts on public property, businesses along Old San Carlos and Times Square would still be allowed to use vending carts on their own property to sell their regular merchandise. The current language does not limit how many vending carts each business may use; the following shadowed language would limit each business to two such carts. The text below also contains several minor editorial changes which should improve clarity. All of the language that might be changed is shown in shadowed text.

(c) **Outdoor sales.** Merchandise may be sold outdoors in the Downtown zoning district only in accordance with this subsection:

(1) **On private property.** Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way on raised porches or on up to two wheeled vending carts that meet the following criteria:

- a. Carts may contain no signage whatever;
- b. Carts must be non-motorized, moveable by hand, and no taller than 10 feet;
- c. Carts must be moved indoors during any hours that the business is not open; and
- d. Carts shall have integral roofs or umbrellas and use traditional or creative designs. Figure 34-9 shows two suggested cart designs.

(2) **On public property.** Retail businesses may ~~sell and serve food~~ extend their operations [this change required only if optional language is added] onto public sidewalks and plazas only as follows:

- a. These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6), along both sides of Old San Carlos Boulevard, and other locations if explicitly approved by the town council.
- b. Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza.
- c. Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines.
- d. No fixed or moveable equipment may be ~~used~~ placed on a public sidewalk or plaza to sell or serve food except as follows:
 1. Tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted except lettering on umbrellas up to 8 inches in height.
 2. Wheeled food carts are permitted if they meet the following criteria:
 - a- Carts must meet the criteria found in § 34-677(c)(1)b-d;
 - b- Not more than one chair or stool may be provided for the employee; and
 - c- One sign per side of cart may be displayed, with each sign limited to 3 square feet in area.
 3. Along Old San Carlos Boulevard, all tables and carts shall be placed only on the 5-foot bricked furnishing zone adjoining the curb and shall not otherwise block pedestrian movement along the sidewalk.

OPTIONAL: (outdoor display of merchandise on public property)

e. No merchandise may be displayed on a public sidewalk or plaza except when placed on tables or shelves that are moved indoors during any hours the business is not open and that do not exceed the following dimensions:

1. Maximum height: 3 feet
2. Maximum width parallel to right-of-way line: 8 feet
3. Maximum depth: may not extend more than 2 feet beyond the right-of-way line onto the sidewalk or plaza.

- f. Vending rights may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
1. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 2. Restrictions on the extent to which food or merchandise [this change required only if optional language is added] not available in the abutting business may be sold;
 3. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
 4. Insurance requirements;
 5. Payment of fees established by the town for vending rights;
 6. Limitations on leasing of vending rights, if any; and
 7. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas and, carts, tables, etc.

18. VILLAGE zoning district (§§ 34-691–34-694): Revised versions of §§ 34-691–34-694 were included as an attachment to the January 27th memo (with a clearer copy of that attachment circulated on January 30th). Based on discussions at the February 3rd public hearing, another revised draft is attached to this memo as Attachment D. This draft contains several minor revisions plus the following significant changes from the original December 17 draft:

- A. Plaza vs. view corridor.** The LPA supported a request by the Red Coconut to replace the recommended requirement in 34-693(d) for a 100-foot-wide plaza on the Gulf of Mexico with a 50-foot-wide view corridor. The vote was 6-3. The LPA recommendation is shown as Option Two on page 103; the original language is shown as Option One. Both options now have a closing sentence that clarifies that the plaza or view corridor need not be available for public use (as suggested on February 3).
- B. Flood damage: 50% or 25%?** At the LPA hearing, the Red Coconut requested a change to § 34-694(c) to have mobile homes and RVs released from the standard town rule on repeated flood damage (as found in § 6-472) and to revert to the previous Lee County language. The LPA requested further research into this request and took no action. The landowner's request is shown as Option Two on page 105, but I do not recommend making that change, which would eliminate the language (shown here with shadowed text) that the town added to the Chapter 6 definition of "substantial damage" in Ordinance 02-01:

"Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred (actual repair work need not have been performed on all flood-related damage)."

There is a further complication in this matter. The original Red Coconut request was to revert to previous Lee County standards (which used only the 50% rule, not

the town's new "25%-twice" rule). To allow this to be done as simply as possible, I had drafted Option Two to say that the shadowed text above would not apply in the VILLAGE zoning district.

However, the shadowed text was added by the town simultaneously with another change to the floodplain regulations, which allowed all landowners to no longer count the cost of damage to nonstructural interior furnishings when calculating the extent of flood damage. To revert to the Lee County standards as originally requested, it will also be necessary to again include the cost of repairing nonstructural interior furnishings when determining the extent of damage.

This creates two new issues:

- A true reversion to Lee County standards may well harm the interests of those who *own* the mobile homes, which are more likely to suffer structural damage from flooding than are conventional buildings. We can presume that the Red Coconut proprietors are making an informed request that they believe is in their best interests of their park; however, the requested change may come at the expense of the owners of the individual mobile homes in Red Coconut and also every resident/owner in Gulf View Colony.
- I have tried my best to draft the requested change for insertion into Chapter 34 even though the actual rule is in Chapter 6. By now trying to make additional changes to Chapter 6 without actually amending that chapter, I fear that the results will be so convoluted as to be incomprehensible.

As a result, it is my strong recommendation that the Town Council simply reject the change shown as Option Two on page 105 and reconsider this entire issue for the whole town during the next revisions to Chapter 6, which I anticipate occurring this fall.

- C. Burden of proof.** § 34-694(d)(2)a. was proposed as entirely new text, but in fact had been located in the previous LDC in § 34-3204. Property owners were left with the burden of proof as to the legality of mobile homes and RVs back two or more decades ago. As a practical matter, this burden could hardly be met, despite evidence of past usage that is available from historical aerial photographs. The following revisions (indicated by shadowed text) would reduce the burden of proof to a more reasonable level; these revisions have been incorporated into the attached draft:

- a. Any mobile home or non-transient recreational vehicle which has been lawfully placed on these sites may be replaced by a mobile home or park trailer of equal or smaller size. The director may use historical aerial photographs, or previous county or town permits if available, to verify that a replacement unit is not larger than a previous lawful unit. ~~upon proof that the placement of the unit was lawful. Such proof may consist of copies of official tax records, tag registrations or county or town permits, or may be by affidavit or~~

~~any other competent evidence.~~ No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted.

- D. Miscellaneous changes in site designations.** The following additional changes should be made and are now reflected in the attached draft:
- a. At the LPA hearing, the Red Coconut requested that five sites be recategorized from transient RV park use to mobile home use (sites K2, P2, P3, Z2, and Z3). The LPA took no action pending research on this request. This change does appear reasonable based on existing conditions and is now shown in § 34-694(d)(2) and (3).
 - b. Sites CE1-CE7, CW00-CW6, and CRD should be recategorized from mobile home use to transient RV use. These 17 sites are on one small “block” behind the Red Coconut laundry building and have historically been used for transient RVs rather than for small mobile homes, despite the apparent lack of zoning for transient RVs. The following steps were made to accomplish this change:
 - (1) Sites CE1-CE7, CW00-CW6, and CRD were removed from the list of sites “not approved in 1987 for larger units” in § 34-694(d)(2).
 - (2) Those same sites were added into the list of sites approved for transient RV use in § 34-694(d)(3); the final clause was changed to “147 sites.”
- E. Hurricane watch vs. hurricane warning.** On February 3rd the Town Council had two questions about § 34-694(d)(3)e:
- a. Whether the word “county” should be replaced by the word “town” in the fourth line, and
 - b. Whether the term “hurricane watch” should be replaced by “hurricane warning.”

The substitution of town for county is warranted because it is possible that a hurricane watch could be in effect for only parts of Lee County but not apply to Fort Myers Beach. This change has been included in the latest version of § 34-694(d)(3)e.

The term “hurricane watch”¹ should remain in this section because the alternate term, “hurricane warning,”² means that hurricane conditions are expected in 24

¹ “HURRICANE WATCH: An alert added to a hurricane advisory covering a specified area and duration. A hurricane watch means that hurricane conditions are a real possibility; it does not mean they are imminent. When a hurricane watch is issued, everyone in the area covered by the watch should listen for further advisories and be prepared to act quickly if hurricane warnings are issues.”

² “HURRICANE WARNING: An alert added to a hurricane advisory when hurricane conditions are expected within 24 hours. Hurricane warnings identify coastal areas where winds of at least 74 miles per hour are expected to occur. A warning may also describe coastal areas where dangerously high water or exceptionally high waves are forecast, even though winds may be less than hurricane force.”

hours. The language in § 34-694(d)(3)e. sets in motion preparatory activities that should take place over the next 48 hours (by which time a storm would already have passed if a hurricane *warning* had been in effect).

- F. Alternate use of mobile home sites after flooding.** The following additional changes should be made and are now reflected in the attached draft. These changes would affect mobile home sites where permanently placed mobile homes or park trailers are “substantially damaged.” Under the previous wording, mobile homes that are substantially damaged could only be replaced by new units that are elevated to “base flood elevation.” A reasonable variation is to allow an alternate use for such sites, permitting those sites to become part of the transient RV park. This change should be included by revising the wording of §§ 34-694(d)(1)b. and (2)b. as follows:

(d)(1)b. Replacement mobile homes or park trailers on these sites must follow the same regulations as provided in § 34-694(c)(2); however, if a mobile home or park trailer incurs “substantial damage” as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).

(d)(2)b. Replacement mobile homes and park trailers must meet the floodplain elevation requirements of § 34-694(c)(2)b; however, if a mobile home or park trailer incurs “substantial damage” as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).

- G. Additional landowner request.** I recommend the previous two changes (#18-F) as the best way to allow reasonable use of all sites in the Red Coconut if flooding occurs.

However, the landowners have requested a more extensive change from current regulations. To support their position, their attorney presented a letter on February 3 from Pauline Camelia, acting director of Lee County’s zoning and development review division, which was dated December 14, 1987.

This letter accurately notes the county’s 1987 decision that 202 of the sites in the Red Coconut were not “lots of record” because of their substandard size, and that this decision has no bearing on the transient RV park: “The lack of a lot of record designation should not affect the operation of the transient RV park.”

The letter also represents the county’s position to be that those 202 lots “can be maintained and repaired for use as transient RV sites.” This position is supported by the law as to the approximately 147 sites that were actually being used at that time for transient RVs. Although most of those sites were zoned in 1965 for transient RVs, those sites would have been protected in any case by the nonconforming rules as long as they had been in continuous use since 1962 as transient RV sites.

However, as to the other sites that were being used for permanently placed mobile homes, they could not be deemed as nonconforming RV sites because there were no RVs on those sites. The mere existence of prior zoning does not qualify any property to begin a use that is no longer permitted. (Small mobile homes were on those sites in 1987 and they are allowed to remain or be replaced, but they cannot be increased in size.)

Ms. Camelia's letter states that because pre-1962 regulations did not distinguish between mobile homes and RVs, transient RVs could also be moved onto the approved lots of record as well. This opinion seems contrary to the law both then and now; nonconforming status is maintained only as long as a previously legal use is in continuous existence. In this case, if transient RVs had ever been on those sites, they had been discontinued in favor of permanently placed mobile homes. Perhaps Ms. Camelia was not aware that these other sites were not being used for transient RVs when she wrote this letter.

Whether this letter is correct or not, the town is not obligated to accept it as overriding the laws that were in effect at the time. Because the VILLAGE zoning district is now being created, the Town Council can simply put into legislation the rules it deems appropriate for the Red Coconut. I believe that the two changes shown in #18-F above are the proper rules in this instance. If the Town Council decides otherwise or simply wishes to honor the statements in Ms. Camelia's letter, it can do so by omitting the changes in #18-F and replacing § 34-694(d) entirely with the following language (relevant changes are shown in shadowed text):

(d) **Red Coconut:** The site plan for the Red Coconut were approved by Lee County on June 2, 1987. This plan was drawn by David Depew and was dated May 20, 1987.

(1) **Sites approved in 1987.** Lee County approved the replacement and potential enlargement of a mobile home or park trailer on each of the following sites: A7-A9, A12-A15, B12, B14-B16, C1, C7, D1, D2, D6, D8-D17, E1-E16, E18-E20, F1-F9, and G2-G12.

a. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.

b. Replacement mobile homes or park trailers on these sites must follow the same regulations as provided in § 34-694(c)(2).

c. Transient recreational vehicles may also be placed on these sites in accordance with the regulations in § 34-694(d)(3).

(2) **Sites not approved in 1987.** Some smaller sites that also contained a mobile home or non-transient recreational vehicle were not approved for larger units in 1987: AA, A1-A6, A10-A11, A16-A17, B1-B11, B13, C2-C6a, C8-C10, D3-D5, D7-D7A, E17, K2, P2-P3, Z2-Z3, and 1-6 on the bay side of Estero Boulevard.

a. Units on these sites may be replaced only by a unit of equal or smaller size, in accordance with the following regulations:

1. Any mobile home or non-transient recreational vehicle ~~unit~~ which has been lawfully placed on these sites on any rental lot within any rental park, regardless whether the park has been converted to either cooperative or condominium ownership prior to June 25, 1986, may be replaced by a ~~unit~~ mobile home or park trailer of equal or smaller size. The director may use

historical aerial photographs, or previous county or town permits if available, to verify that a replacement unit is not larger than a previous lawful unit. ~~upon proof that the placement of the unit was lawful. Such proof may consist of copies of official tax records, tag registrations or county or town permits, or may be by affidavit or any other competent evidence. No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted.~~ [moved from § 34-3204]

2. Replacement mobile homes and park trailers must meet the floodplain elevation requirements of § 34-694(c)(2)b.
3. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.
4. One storage shed or utility room may be permitted if in compliance with § 34-694(c)(2)d.
5. Additions may not be constructed.
- b. Transient recreational vehicles may also be placed on these sites in accordance with the regulations in § 34-694(d)(3).

(3) **Transient RV park.** The remainder of the sites shown on this plan may continue in operation as a transient RV park. These sites can be identified on the 1987 site plan as follows: on the Gulf of Mexico, sites 1-53; on the bay side of Estero Boulevard, sites CE1-CE7, CWOO-CW6, CRD, H1-H10, J1-J10, K1, K3-K18, L1-L4, M1-M4, N1-N14, P1, R1-R3, Y-Y-Y-Y, and Z1. The following regulations apply to these 147 sites:

- a. Transient recreational vehicles must comply with the floodplain regulations found in § 6-472(3).
- b. Additions may not be constructed onto transient recreational vehicles.
- c. Storage sheds and other accessory structures may not be placed on individual sites.
- d. All travel trailers, motor homes or camping trailers left unattended for more than two weeks during the months of June through December. For purposes of this section only, the term “unattended” shall be interpreted to mean that the owner of the unit has not provided for a person to be responsible for the unit in the event of a hurricane watch alert as set forth in the following subsection ~~(2)b~~ of this section. [moved from § 34-762(2)i.2.a]
- e. All travel trailers, motor homes or camping trailers shall be tied down within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center. Travel trailers, motor homes or camping trailers not tied down shall be removed from the county within 48 hours of such a hurricane watch, or placed within an approved off-lot storage area. [moved from § 34-762(2)i.2.b]

- 19. Amendments to Planned Developments (§ 34-219(b)):** On behalf of John Richard, Beverly Grady has proposed a “minor amendment” process which would allow the Town Council to consider changes to an approved planned development without the normal public hearing process.

The LDC already has a process that allows minor amendments to be approved administratively. If the Town Council wishes to add another process for considering minor amendments, the current administrative appeal procedure could be expanded to allow an applicant to simply appeal a negative decision. Because of the nature of such an appeal, public notice should be provided in the same manner as for regular zoning hearings. The following new language for subsection (b)(2) could be used (changes are indicated by shadowed text):

(b) Amendments that may be approved by the ~~department~~ director include, in general, any change ~~to the interior of the development~~ which does not increase height, density, or intensity (i.e., number of dwelling units, guest units, or quantity of commercial floor area), ~~or a decrease in buffers or open space, or add additional land uses.~~ The director shall not approve any change which results in a ~~substantial underutilization of public resources and public infrastructure committed to the support of the development, nor shall the director approve any change which results in a~~ reduction of total open space, buffering, landscaping, and preservation areas or which adversely impacts on surrounding land uses.

- (1) This authority is granted to the director to eliminate unnecessary processing delays for proposed changes that are:
- a. substantially similar to the prior approval;
 - b. likely to be noncontroversial; and
 - c. in conformance with all town regulations and plans.
- ~~(2) Decisions by the director pursuant to this subsection are discretionary and may not be appealed pursuant to § 34-86.~~
- (2) Decisions by the director pursuant to this subsection may be appealed only as follows:
- a. Appeals will not be considered for any of the following requests:
 1. an increase in height, density, or intensity (i.e., number of dwelling units, guest units, or floor area), or
 2. an additional land use, or
 3. a variance or deviation from this code, or
 4. a substantial change from previously approved architectural drawings or master concept plan.
 - b. The appeal must be filed and processed in accordance with § 34-86. In addition, the appellant must provide a list and map of surrounding property owners and one set of mailing labels in accordance with § 34-202(6) and (7), and shall pay a fee established by the director.
 - c. The director shall provide notice of the public hearing where this appeal will be considered using the procedures in § 34-236.
 - d. Upon considering an appeal, the town council may uphold or repeal the director’s decision, or may modify that decision by removing, adding, or modifying any conditions of approval.

- 20. Amateur Radio Antenna/Towers (§ 34-1175(b)):** At the February 3 public hearing I was asked to draft alternative language that would restrict amateur radio antennas further than the current language in § 34-1775(b). The current and alternate language is shown here:

OPTION ONE: (original proposal)

(b) ~~All commercial storage and display of satellite dishes shall meet the requirements of division 36 of this article: *Amateur radio antenna/towers.*~~

- (1) Amateur radio antenna/towers up to 75 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property.
- (2) Amateur radio antenna/towers over 75 feet in height may be permitted by special exception in any zoning district.

OPTION TWO: (alternate language)

(b) ~~All commercial storage and display of satellite dishes shall meet the requirements of division 36 of this article: *Amateur radio antenna/towers.*~~

- (1) Amateur radio antenna/towers up to 50 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property and in the rear or side yard wherever possible.
- (2) Amateur radio antenna/towers over 50 feet in height may be permitted by special exception in any zoning district.

- 21. Outdoor Display of Merchandise (§§ 34-3004(b)):** At the February 3 public hearing I was asked to draft alternate language that would allow the outdoor display of lawn and garden ornaments to supplement the current language in § 34-3004(b). The current language is shown below, followed by the requested alternate language (shown in shadowed text):

OPTION ONE: (original proposal)

(b) This code allow outdoor display and sales of merchandise only as follows:

- (1) In farmers' markets or other special events authorized by the town;
- (2) Beach furniture (in accordance with § 14-5);
- (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
- (4) Boats (by boat dealers in zoning districts where they are permitted);
- (5) Personal watercraft (in accordance with § 27-49);
- (6) On private property in the Downtown zoning district (in accordance with § 34-677(c)(1)); and
- (7) On public property in parts of the Downtown zoning district (in accordance with § 34-677(c)(2)).

OPTION TWO: (alternate language)

(b) This code allow outdoor display and sales of merchandise only as follows:

- (1) In farmers' markets or other special events authorized by the town;
- (2) Beach furniture (in accordance with § 14-5);
- (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
- (4) Boats (by boat dealers in zoning districts where they are permitted);
- (5) Personal watercraft (in accordance with § 27-49);
- (6) Lawn and garden ornaments (by retail stores in zoning districts where they are permitted), provided the merchandise collectively does not exceed a height of 3 feet and a width (parallel to the right-of-way) of 8 feet;
- (7) On private property in the Downtown zoning district (in accordance with § 34-677(c)(1)); and
- (8) On public property in parts of the Downtown zoning district (in accordance with § 34-677(c)(2)).

22. Short-term rentals (§§ 34-2391-2410): Completely revised options for regulating short-term rentals were provided with the January 5th memo.

A summary chart that highlights the similarities and differences among all six options is included here as Attachment E. Attachment F is a reprint of the complete text for all six options, with a single change to correct errors in Option Two that listed Variations C and D on page 189. These errors misstated the LPA's formal recommendation and contained several ambiguities. The corrected version of Variations C and D now reads as follows:

Variation C: (original proposal)

(2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.

Variation D-1: (LPA recommendation)

(2) This right shall be extinguished when the property is transferred to subsequent owners.

Variation D-2: (concept discussed by LPA, but not recommended)

(2) This right shall be extinguished when the property is transferred to subsequent owners, with the following exceptions:

- a. This right shall not be extinguished when a property transfer is the result of the death of an owner.
- b. A property transfer shall be deemed to have occurred if the title is held by a corporation and majority control of the corporation is transferred to a different party, except when such transfer is the result of the death of a stockholder, in which case this right shall not be extinguished.

The following explanation of the various options for regulating short-term rentals first appeared in the January 5th memo:

In the 12-17-02 draft of this code, five options were presented for regulating short-term rentals (see pages 189 through 195).

Option 1: Based on the original proposal in earlier drafts of the LDC.

Option 2: Based on the proposal made by Councilman Van Duzer on October 22.

Option 3: Based on the proposal from the Task Force (with stronger enforcement provisions).

Option 4: Based on the proposal from Neighbors for Neighborhoods.

Option 5: Based on the concept in the current LDC for mother-in-law apartments.

At the LPA hearing there was extensive public testimony on these and other options. In response, the LPA formally rejected Options 1 and 3, then formulated both majority and minority positions as part of its recommendation to the Town Council. The following discussion explains the LPA's actions and summarizes certain modifications to the options that are shown in detail in the attached redraft of that portion of the LDC.

A 5-to-4 majority of the LPA voted to recommend a version of “Option 2” on short-term rentals, with these changes from the 12-17 draft:

- On the bay side of Estero Boulevard, the LPA did not approve of allowing short-term rentals being allowed back 200 feet, which is how Options 1, 2, 4, and 5 were worded. The LPA voted to recommend allowing short-term rentals anywhere on the Gulf side of Estero Boulevard, but on the Bay side, only on lots *directly adjoining* Estero Boulevard. (This same change is now shown in the latest drafts of Options 1, 2, 4, and 5.)
- The LPA recommended changing the “grandfathering” date from October 22, 2002 (the date that Option 2 was first announced) to the date that Chapter 34 is adopted, which may be on March 3, 2003. (The original language is now shown in Option 2 as “Variation A”; the LPA recommendation is now shown as “Variation B.”)
- The LPA recommended that “grandfathered” status for short-term rentals in areas where new rentals would not be permitted *should not* be passed on to subsequent owners of the property. However, some LPA members were concerned about how this would be worded because they acknowledged that a simple title change wasn’t always the best measure of ownership; for instance, a property could be transferred into a trust, without the actual owners changing; or a property could be held by a corporation whose stock could be sold without changing the name on the title. The original language is now shown in Option 2 as “Variation C”; the LPA’s formal recommendation is now shown as “Variation D-1”; and new language that attempts to respond to the ownership questions raised at the LPA meeting is now shown as “Variation D-2.”

Because the LPA vote was so close, those in the minority formulated their own position. One in the minority had only a minor disagreement with the majority position; the other three formulated the following variations on Option 3, rejecting any geographic restrictions on weekly rentals:

- Increase those rentals required to register to include all rentals of *one year or less*; Option 3 only required registration for units that were held out to the public as being available for period of *30 days or less*. (The original language is now shown in Option 3 as “Variation E”; the LPA minority recommendation is now shown as “Variation F.”)
- Delete the LPA’s prior addition to the Task Force’s work, where the LPA added in the LDC’s definition of family. The Task Force original proposal would allow more than one family to share a house, provided that the number of renters didn’t exceed two persons per bedroom plus two additional persons. (The original language is now shown in Option 3 as “Variation G”; the LPA minority recommendation is now shown as “Variation H.”)
- Commit to these regulations for a period of five years, then allow them to “sunset” unless re-adopted by the Town Council. (The original language is now shown in Option 3 as “Variation I”; the LPA minority recommendation is now shown as “Variation J.”)

In addition to these changes, several additional changes on short-term rentals have been added since the LPA public hearing:

Definition of minimum rental period: In Options 1, 2, and 5, the restrictions would apply to any dwelling unit in a single-family zone that is rented to more than one family “during any 28-day period.” This wording does not prohibit a 7-day, 14-day, or 21-day rental as long as the unit is not rented at all for the rest of the month. Option 4 contains a stricter limitation that would apply to any dwelling unit that is rented to one family for anything less than “a period of 28 days,” thus requiring a *minimum rental period* of 28 days for each tenant.³

This distinction is very important; in fact, it was responsible for litigation and controversy last year on Sanibel last year. Sanibel officials insisted that their code meant the latter (their exact wording is “*dwelling units may not be made available for rental or occupancy for periods of less than four (4) consecutive weeks....*”), while some rental agents thought it could be interpreted to allow the former.

The former definition is less strict but is apparently still confusing because it does not explicitly say that a weekly rental would still be acceptable provided the unit was not rented to another family any time during the remainder of the month.

To make this distinction clearer, the drafts of Options 1, 2, and 5 are now more explicit that one weekly rental would still be acceptable in a single-family zone provided that the unit is not rented to another family any time during the remainder of the month. (Or, if the Town Council prefers the stricter approach, the wording in § 34-2391 of Option 4 could replace this wording in Options 1, 2, or 5.)

In addition, the term “continuous weekly rentals” is now used to refer to the unrestricted weekly rentals that would still be allowed in RC (Residential Conservation) and RM (Residential Multifamily) zoning districts, and which under Options 2 and 4 could be continued, but not begun, in the RS (Residential Single-Family) zone.

Behavioral rules for short-term rentals: In the 12-17 draft, Option 3 contained specific behavioral rules for short-term tenants and required operators to register their units, limit occupancy in single-family districts to one family, establish nighttime “quiet hours,” post the town’s rules and obtain signatures from tenants acknowledging them, and ensure that refuse containers weren’t left on the street more than 24 hours. Options 2 and 4 didn’t require registration of short-term rentals generally, but did require certain “grandfathered” units to register. Two logical questions then arose:

³ An additional problem with the current wording is that the state registry of short-term rentals is based on rentals “for periods of less than 30 days or 1 calendar month, whichever is less.” The proposed LDC is slightly different: “during any 28-day period.” This discrepancy isn’t meaningful from a policy standpoint, but it would make compliance with town and state law more complicated. For this reason, the new draft of the LDC uses the terms “one day,” “one week,” and “one month” instead of the number of days.

- Should the grandfathered units in Options 2 and 4 be required to comply with the behavioral rules and cumulative penalties described in Option 3?
- Under Options 1, 2, 4, and 5, short-term rentals would still be allowed by right in most zoning districts (other than the RS single-family zones). Should those units be expected to comply with the same behavioral requirements, even though they would not be required to register with the town?

Anticipating positive answers to both questions, the new drafts of Options 2 and 4 contain language requiring conformance with the behavioral rules from Option 3 for “grandfathered” short-term rentals in single-family zones as well as for short-term rentals in other zones where they are permitted by right.

Adding a “minimum regulation” option: All five original options would add new regulations regarding short-term rentals. The Town Council also has the option to allow weekly rentals:

- without establishing new geographic restrictions (as in Options 1, 2, 4, and 5);
- without adding a town registry on top of the existing state registry (as in Options 2, 3, and 4); and
- without allowing a larger number of occupants in dwellings than are allowed today for owner-occupancy or for regular rentals (as would be allowed by Option 3 for duplexes and triplexes, and by the LPA minority recommendation for all short-term rentals).

This option could include most of the “code of conduct” drafted by the Task Force and have it be enforced through the standard methods in the land development code, thus avoiding the need for a formal registry. This concept now appears as Option 6.

All of the revisions discussed here for short-term rentals are shown in Attachment F, which is a redraft of Tables 34-1 and 34-2 and §§ 34-2391–2410, all dated February 24, 2003.

23. Tattoo studios and body-piercing salons (§§ 34-3066–3100): Three options are presented for regulating tattoo studios and body-piercing salons. The Town Council needs to choose one of the three, or a different option, or delete §§ 34-3066–3100 entirely.

- If Option 3 is chosen, the following additional changes should be made:
 - a. The purpose statement in § 34-3066 should be revised as follows (changes are indicated by shadowed text):

This division regulates the placement of tattoo studios and body-piercing salons. ~~The purpose is to reduce the permanent effects of impulsive behavior by separating establishments or concentrations of establishments that indelibly mark the human body from bars and restaurants that serve alcoholic beverages. The purpose is to avoid the proliferation or concentration of such establishments in the Town of Fort Myers Beach.~~
 - b. The definition of “expanded” should be removed from § 34-3067.
 - c. The word “expanded” should be removed from three places in § 34-3068: removed from the title and removed from the first and fifth lines of Option 3.
 - d. All of § 34-3069 should be deleted as it is incompatible with Option 3.

- If no options are selected and these sections are deleted entirely, tattoo studios and body-piercing salons would be categorized as “personal services” (or “retail store, small” if the primary business is retail sales). See Tables 34-1 and 34-2 for the zoning districts where they would be permitted.

24. INTERIM ZONING MAP: Three property owners raised substantially the same issue on February 3 as it affects the proposed zoning on the following lots:

- a. Brad Hill, 111 Bahia Via, STRAP # 34-46-24-W4-00012.0030
- b. Fred Paine, 821 Estero Boulevard, STRAP # 24-46-23-W3-0050B.0070
- c. James Purtell, 831 Estero Boulevard, STRAP # 24-46-23-W3-0050B.0050

In each case, these lots are now being used for residential purposes, but the existing zoning has been C-1, which allowed both commercial and residential uses. Most commercial uses have been restricted on these properties since they were designated as “Mixed Residential” by the comprehensive plan in order to limit commercial intrusion into residential neighborhoods. As a result, the proposed zoning for these lots is “RS” for 111 Bahia Via and “RC” for 821 and 831 Estero Boulevard.

These landowners have several options:

- Continue the existing residential uses on these lots.
- Apply for CPD zoning, which under Policy 4-B-4 of the comprehensive plan could allow lower-impact commercial uses such as offices or motels.
- Apply for a change to the comprehensive plan to change the “Mixed Residential” designation on these lots. The deadline for applications is the last day of each year.

At the February 3 public hearing, Mr. Paine’s representative asked the Town Council to waive all CPD applications fees or to sponsor an immediate amendment to the comprehensive plan for his lot. It would not be advisable for the Town Council to set a precedent of waiving fees for CPD applications or for sponsoring private amendments to the plan. As to the “immediate” plan-amendment question, there is an option under state law for “small-scale” amendments to a comprehensive plan that can occur more frequently than major amendments. Fort Myers Beach has never been asked to consider a small-scale amendment application during the year, and there is no process in place to do so, but it is an option that is open to the Town Council. Once Chapter 34 is completed and published, I will research the issues and prepare a memo to the Town Council outlining the state requirements and potential procedures that the town could use if it wishes to begin accepting small-scale plan amendments during the year.

Copy to: Local Planning Agency, Town Attorney, Town Staff, Library Reference Desk

Attachments: A – Ordinance No. 03-__ dated March 3, 2003 (not including Exhibits A or B)
B – SANTINI zoning district (§§ 34-681–683), dated February 24, 2003
C – Chart identifying all existing “planned developments” in the Town of Fort Myers Beach
D – VILLAGE zoning district (§§ 34-691–694), dated February 24, 2003
E – Chart highlighting the similarities and differences between short-term rental options
F – Tables 34-1, 34-2, and short-term rentals (§§ 34-2391–2410), dated February 24, 2003

ATTACHMENT A

ORDINANCE No. 03-__

AN ORDINANCE AMENDING THE ZONING CHAPTER (CHAPTER 34) OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE AND ADOPTING AN INTERIM ZONING MAP THAT ASSIGNS A NEW ZONING DISTRICT TO ALL LAND IN THE TOWN; PROVIDING AUTHORITY; REPEALING CHAPTER 34 “ZONING” OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; REPEALING APPENDIX L OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS; REPEALING ORDINANCES 96-02, 96-25, AND 00-03 “LOCAL PLANNING AGENCY”; ADOPTING AN INTERIM ZONING MAP THAT ASSIGNS A NEW ZONING DISTRICT TO ALL LAND IN THE TOWN; ADOPTING A NEW CHAPTER 34 OF THE LAND DEVELOPMENT CODE ENTITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES” WHICH PROVIDES ARTICLE I IN GENERAL; ARTICLE II ZONING PROCEDURES, Division 1 Generally, Division 2 Town Council, Division 3 Local Planning Agency, Division 4 Applications and Procedures, Division 5 Public Hearings and Review, and Division 6 Interpretations, Enforcement, and Special Administrative Actions; ARTICLE III ZONING DISTRICT REGULATIONS, Division 1 Mapping of Zoning Districts, Division 2 Allowable Land Uses in Each Zoning District, Division 3 Explanation of Property Development Regulations, Division 4 Conventional Zoning Districts, Division 5 Redevelopment Zoning Districts, Division 6 Planned Development Zoning Districts, Division 7 Commercial Design Standards, and Division 8 Residential Design Standards; ARTICLE IV SUPPLEMENTAL REGULATIONS, Division 1 Generally, Division 2 Accessory Uses, Buildings, and Structures, Division 3 Sexually-oriented Businesses, Division 4 Aircraft, Division 5 Alcoholic Beverages, Division 6 Animals, Division 7 Animal Clinics and Kennels, Division 8 Automotive Businesses, Division 9 Bus Stations and Transit Terminals, Division 10 Care and Assisted Living Facilities, Division 11 Commercial Antennas and Communication Towers, Division 12 Drug Paraphernalia, Division 13 Environmentally Sensitive Areas, Division 14 Essential Services, Essential Service Equipment, and Essential Service Buildings, Division 15 Excavations, Division 16 Reserved, Division 17 Fences, Walls, and Entrance Gates, Division 18 Home Occupations; Live/Work and Work/Live Dwellings, Division 19 Hotels, Motels, and Bed-and-Breakfast Inns, Division 20 Reserved, Division 21 Marine Facilities and Live-Aboard Vessels, Division 22 Reserved, Division 23 Mobile Homes, Division 24 Moving of Buildings, Division 25 Off-Street Loading Areas, Division 26 Parking, Division 26-A Performance Standards, Division 27 Places of Worship and Religious Facilities, Division 28 Reserved, Division 29 Private Clubs and Membership Organizations, Division 30 Recreation Facilities, Division 31 Recreational Vehicles, Division 32 Schools, Division 32-A Short-Term Rentals, Division 33 Signs, Division 34 Special Events, Division 35 Reserved, Division 36 Storage Facilities and Outdoor Display of Merchandise, Division 37 Subordinate and Temporary Uses, Division 38 Tall Structures, Division 38-A Tattoo Studios and Body-Piercing Salons, Division 39 Use, Occupancy, Construction, and Moving Regulations, Division 40 Vehicle Visibility, and Division 41 Water-Oriented Rentals; ARTICLE V NONCONFORMITIES, Division 1 Generally, Division 2 Nonconforming Buildings, Division 3 Nonconforming Uses, and Division 4 Nonconforming Lots; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. REPEAL OF CHAPTER 34 “ZONING” OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS. By the authority of Section 15.08 (c) of the Town Charter, Chapters 34 of the transitional land development regulations are hereby repealed. Transitional Chapter 34 is entitled ZONING and contains the following articles: Article I In General, Article II Administration, Article III Reserved, Article IV Planned Developments, Article V Comprehensive Planning; The Lee Plan; Article VI District Regulations, Article VII Supplementary District Regulations; and Article VIII Nonconformities.

SECTION 3. REPEAL OF APPENDIX L OF THE TRANSITIONAL LAND DEVELOPMENT REGULATIONS. By the authority of Section 15.08 (c) of the Town Charter, APPENDIX L of the transitional land development regulations is hereby repealed. Transitional Appendix L was adopted by Fort Myers Beach Ordinance 96-20 as the Master Site Plan for the Fort Myers Beach Downtown District (also known as the core area overlay district).

SECTION 4. REPEAL OF ORDINANCES 96-02, 96-25, AND 00-03 “LOCAL PLANNING AGENCY.” By the authority of Article 10 of the Town Charter, Fort Myers Beach Ordinances No. 96-02, 96-25, and 00-03 which established and governed the Fort Myers Beach Local Planning Agency, are hereby repealed. Pursuant to Section 5 below, the terms of Ordinances 96-02, 96-25, and 00-03 are being incorporated, with modifications, into the land development code as §§ 34-111–34-120 and 34-123 of Chapter 34.

SECTION 5. ADOPTION OF INTERIM ZONING MAP. Exhibit A, a copy of which is attached to this ordinance, is hereby adopted as the interim zoning map for the Town of Fort Myers Beach. In accordance with Section 34-613 of the new land development code, the interim zoning map assigns all land in the Town of Fort Myers to one of the new zoning districts established by the new Chapter 34 of the land development code (see Exhibit B). The new zoning districts shall take effect immediately and shall replace the previous zoning districts that had been assigned to all land in the Town of Fort Myers Beach. Previous approvals of variances, special exceptions, special permits, and other zoning actions that did not change zoning district boundaries cannot be shown on the interim zoning map due to its scale but are not affected by the adoption of the interim zoning map.

SECTION 6. ADOPTION OF NEW CHAPTER 34 OF THE LAND DEVELOPMENT CODE. The new Chapter 34 of the Town of Fort Myers Beach land development code entitled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES” shall be as contained in the attached Exhibit B. Entirely new language is indicated with underlining. Language being repealed from the transitional land development regulations is indicated with strike-throughs. Language being readopted by this ordinance is neither underlined nor struck through. The new Chapter 34 contains the following articles, divisions, and subdivisions:

ARTICLE I. IN GENERAL

ARTICLE II. ZONING PROCEDURES

Division 1. Generally

Division 2. Town Council

Division 3. Local Planning Agency

Division 4. Applications and Procedures

Subdivision I. General Procedures

Subdivision II. Additional Procedures for Planned Development Zoning Districts

Division 5. Public Hearings and Review

Division 6. Interpretations, Enforcement, and Special Administrative Actions

ARTICLE III. ZONING DISTRICT REGULATIONS

Division 1. Mapping of Zoning Districts

Division 2. Allowable Land Uses in Each Zoning District

Division 3. Explanation of Property Development Regulations

Division 4. Conventional Zoning Districts

Division 5. Redevelopment Zoning Districts

Subdivision I. Generally

Subdivision II. DOWNTOWN Zoning District

Subdivision III. SANTINI Zoning District

Subdivision IV. VILLAGE Zoning District

Subdivision V. CB Zoning District

Division 6. Planned Development Zoning Districts

Subdivision I. Generally

Subdivision II. RPD (Residential Planned Development) Zoning District

Subdivision III. CPD (Commercial Planned Development) Zoning District

Subdivision IV. Former Planned Development Zoning Districts

Division 7. Commercial Design Standards

Division 8. Residential Design Standards

ARTICLE IV. SUPPLEMENTAL REGULATIONS

Division 1. Generally

Division 2. Accessory Uses, Buildings, and Structures

Division 3. Sexually-oriented Businesses

Division 4. Aircraft

Division 5. Alcoholic Beverages

Division 6. Animals

Division 7. Animal Clinics and Kennels

Division 8. Automotive Businesses

Division 9. Bus Stations and Transit Terminals

Division 10. Care and Assisted Living Facilities

Division 11. Commercial Antennas and Communication Towers

Division 12. Drug Paraphernalia

Division 13. Environmentally Sensitive Areas

Division 14. Essential Services, Essential Service Equipment, and Essential Service Buildings

Division 15. Excavations

Division 16. Reserved.

Division 17. Fences, Walls, and Entrance Gates

Division 18. Home Occupations; Live/Work and Work/Live Dwellings

Division 19. Hotels, Motels, and Bed-and-Breakfast Inns

- Division 20. Reserved
- Division 21. Marine Facilities and Live-Aboard Vessels
- Division 22. Reserved
- Division 23. Mobile Homes
- Division 24. Moving of Buildings
- Division 25. Off-Street Loading Areas
- Division 26. Parking
- Division 26-A. Performance Standards
- Division 27. Places of Worship and Religious Facilities
- Division 28. Reserved
- Division 29. Private Clubs and Membership Organizations
- Division 30. Recreation Facilities
- Division 31. Recreational Vehicles
- Division 32. Schools
- Division 32-A. Short-Term Rentals
- Division 33. Signs
- Division 34. Special Events
- Division 35. Reserved
- Division 36. Storage Facilities and Outdoor Display of Merchandise
- Division 37. Subordinate and Temporary Uses
 - Subdivision I. In General
 - Subdivision II. Temporary Uses
 - Subdivision III. Special events.
- Division 38. Tall Structures
- Division 38-A. Tattoo Studios and Body-Piercing Salons
- Division 39. Use, Occupancy, Construction, and Moving Regulations
- Division 40. Vehicle Visibility
- Division 41. Water-Oriented Rentals

ARTICLE V. NONCONFORMITIES

- Division 1. Generally
- Division 2. Nonconforming Buildings
- Division 3. Nonconforming Uses
- Division 4. Nonconforming Lots

SECTION 7. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 8. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____; upon being put to a vote, the result was as follows:

Howard Rynearson _____
Daniel Hughes _____
Bill Thomas _____
W. H. "Bill" Van Duzer _____
Terry Cain _____

DULY PASSED AND ENACTED this ____rd day of _____, 2003.

ATTEST: TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
Daniel Hughes, Mayor

Approved as to form by:

Richard V.S. Roosa, Town Attorney

ATTACHMENT B

SANTINI

Subdivision III. SANTINI Zoning District

Sec. 34-681. Purpose.

The purpose of the SANTINI district is to provide alternative futures for the Santini Marina Plaza, either a continuation of the current marina and shopping center or their transformation into a pedestrian-oriented neighborhood center.

- (1) The existing stores and marina in the SANTINI district may continue in full operation and may be renovated or redeveloped in accordance with § 34-682.
- (2) As an alternative, the SANTINI district provides a second set of regulations (in § 34-683) that would allow the transformation of the shopping center and marina into a pedestrian-oriented neighborhood center:
 - a. The SANTINI district can become a neighborhood center to serve visitors and the populous south end of the island in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan (see Policies 3-C-1, 3-C-2, and 4-F-2-ii).
 - b. The site could support additional mixed-use buildings if provided with shared parking, a pattern of smaller blocks, and an urban plaza.
 - c. Full realization of this concept will require a partnership between the property owners and the town that will transform the adjoining portion of Estero Boulevard from a rural highway with deep swales into a street with shaded sidewalks and some on-street parking.

Sec. 34-682. District map and applicability.

The area indicated on Figure 34-10 is the outer boundary of the SANTINI district.

- (1) Properties that are zoned in a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the SANTINI district, even if the property is shown on Figure 34-10.

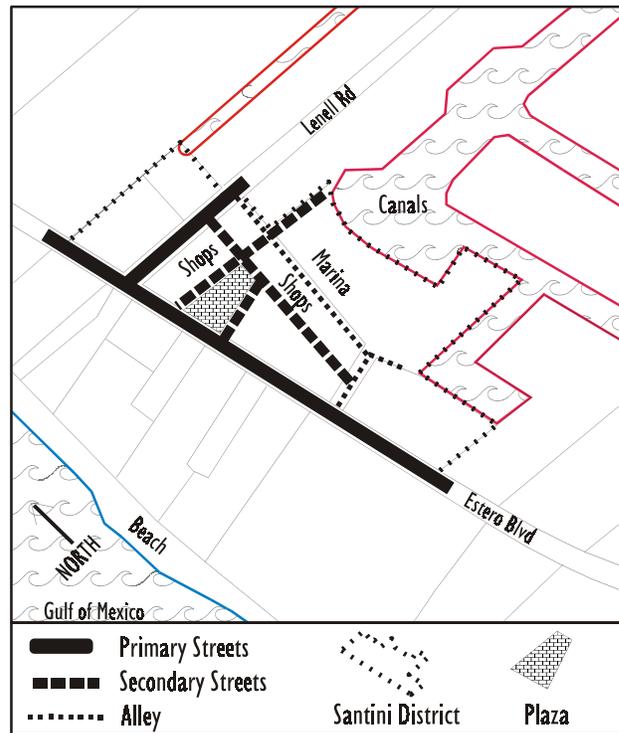


Figure 34-10

- (2) For properties zoned into the SANTINI district rather than in a PD district, the applicable regulations are as follows:
 - a. **Continued use of existing buildings.** The regulations in this subdivision apply to the continued use of existing buildings and structures for allowable uses as defined in Tables 34-1 and 34-2 for the SANTINI zoning district.
 - b. **Renovating, enlarging or replacing individual buildings.**
 1. Existing buildings may be renovated, enlarged, or replaced as follows:
 - a- Physical enlargement of existing buildings is permitted provided that the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code, and
 - b- Replacements for existing buildings are permitted provided that they will not increase the existing floor area ratio, as that term is defined in § 34-633.

SANTINI

2. Renovations, enlargements, and replacements to existing buildings are governed by the regulations for the CM zoning district as provided in Table 34-3 and by the other limitations in this section.
3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built.
4. Any specific deviations granted by prior CPD resolutions shall remain in effect for properties that are zoned into the SANTINI district.

- (3) ***Transformation of existing businesses into a neighborhood center.*** Physical enlargements of existing buildings that constitute a “substantial improvement” as that term is defined in § 6-405 must be in the form of a neighborhood center as described in § 34-683.

Sec. 34-683. Creation of neighborhood center.

(a) ***Purpose.*** This section provides detailed regulations for the transformation of existing businesses into a neighborhood center.

- (1) This transformation may be required by § 34-682(3) or may be chosen by any landowner in the SANTINI district.
- (2) Once this option is chosen or required, all subsections of § 34-683 become mandatory requirements, except where they are clearly inapplicable to a given portion of the property.

(b) ***Agreement for streetscape improvements.*** Landowners who choose to partially or fully develop their land in the SANTINI district into a neighborhood center may simultaneously request public streetscape improvements by entering into a development agreement with the town (see § 2-91–102).

- (a) This agreement would establish a public/private partnership for the necessary improvements, identifying responsibilities, timing, approximate costs, and funding.
- (2) This agreement would also contain a detailed plan for the redevelopment of the property

consistent with the regulations in the remainder of this section.

(c) ***Allowable uses.*** Allowable uses for the SANTINI zoning district are defined in Tables 34-1 and 34-2.

(d) ***Streets.*** Secondary streets and alleys shall be laid out and dedicated to the public generally in accordance with Figure 34-10 to improve circulation for vehicles and pedestrians.

(e) ***Plazas.*** An urban plaza at least 1/2 acre in size shall be provided along Estero Boulevard as a focal point for mixed-use buildings and as a public gathering place. This plaza may also be used for overflow parking.

(f) ***Build-to lines established.*** Build-to lines (see § 34-662) vary according to the streets and street types designated on Figure 34-10.

- (1) Build-to lines for all primary streets and streets surrounding the plaza are 0 feet to 5 feet.
- (2) Build-to lines for all secondary streets are 0 feet to 10 feet.
- (3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§ 34-991–1010), especially along Estero Boulevard.
- (4) Compliance with build-to lines is not required for buildings that are used for the storage of boats or for marina accessory uses, or for any buildings extend closer than 40 feet to the waterfront.
- (5) Buildings used for the storage of boats or cars must be separated from Estero Boulevard by a liner building that provides usable building space at least 20 feet deep (see example in Figure 34-8).
 - a. This requirement applies to all buildings that extend closer than 75 feet to Estero Boulevard.
 - b. Liner buildings must be two stories or more in height.
 - c. Liner buildings may be detached from or attached to building space used for the storage of boats or cars.
 - d. Liner buildings must be constructed simultaneously with those portions of

buildings that are subject to this requirement.

e. Liner buildings and any visible portions of the principal facade of buildings that are used for the storage of boats or cars must meet the commercial design standards (see §§ 34-991–1010).

(g) **Setback lines.** No minimum setbacks are required (see § 34-662).

(h) **Building frontage.** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-10:

- (1) For primary streets and streets surrounding the plaza, building frontages shall be at least 70% of the lot frontage.
- (2) For secondary streets, building frontages shall be at least 35% of the lot frontage.
- (3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
- (4) Phased redevelopment is permitted provided that a site plan is provided showing how the building frontage percentages will be met upon completion of the redevelopment

(i) **Building height.** Building heights (see § 34-631) shall be limited to:

- (1) For parcels immediately abutting a plaza of at least ½ acre in size and for parcels immediately abutting canals, a maximum of 40 feet above base flood elevation and no taller than three stories.
- (2) For all other parcels, a maximum of 30 feet above base flood elevation and no taller than two stories.

(j) **Floor area ratio (FAR).** Floor area ratios shall not exceed 1.0 (see § 34-633).

(k) **Residential density.** Residential units can be constructed in the SANTINI district up to the maximum density allowed by the Fort Myers Beach Comprehensive Plan.

(l) **Guest units.** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(m) **Reductions to minimum parking requirements.** Neighborhood centers are “park-once” districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 shall be multiplied by 67% to determine the adjusted parking requirement for the SANTINI district. Adjoining on-street parking spaces may be counted toward this parking requirement.

(n) **Parking location.** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

- (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial design guidelines; and
- (2) Driveways leading to under-building parking spaces must connect to a driveway, secondary street, or alley, and may not be accessed from a primary street or pedestrian plaza.

(o) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

Secs. 34-684--34-690. Reserved.

| RESOLUTION NUMBER | APPROVAL DATE | APPLICANT | PROJECT NAME | REZONING REQUEST (FROM/TO) | CASE NUMBER | SECTION TOWNSHIP RANGE | SHOWN HOW ON INTERIM ZONING MAP? | FINAL RECOMMENDATION |
|--------------------------|----------------------|---------------------------|-----------------------------------|-----------------------------------|---------------------|-------------------------------|---|-----------------------------|
| FMB-99-07 | 1999/02/22 | Peter Lisich | Pink Shell / Abaco Beach | amend CPD | 95-01-034.03Z 02.?? | 24-46-23 | CPD | CPD |
| FMB-00-07 | 2000/01/10 | Pink Shell Resort | Pink Shell / all | amend CPD & PUD | 95-01-034.03Z 03.01 | 24-46-23 | CPD | CPD |
| FMB-00-07a | 2000/01/29 | Pink Shell Resort | Pink Shell / all | amend CPD & PUD | 95-01-034.03Z 03.01 | 24-46-23 | CPD | CPD |
| FMB-01-21 | 2001/06/25 | Boykin Hotel Properties | Pink Shell / White Sands | amend PUD & CPD | DCI2001-00027 | 24-46-23 | CPD | CPD |
| FMB-01-26 | 2001/08/27 | Boykin Hotel Properties | Pink Shell / Captiva-Useppa | RM-2 to MPD | DCI2001-00071 | 24-46-23 | CPD | CPD |
| FMB-99-08 | 1999/02/22 | Peter Lisich | Hotel Casa Playa, 510 Estero Bl. | amend CPD | 95-07-043.02Z 02.01 | 24-46-23 | CPD | CPD |
| FMB-97-14 | 1997/04/07 | Pink Porpoise | Edison Beach House, 830 Estero | RM-2 & CT to CPD | 96-12-018.03Z 01.01 | 24-46-23 | CPD | CPD |
| FMB-01-14 | 2001/06/04 | First Central Invest. | Edison Beach House, 830 Estero | amend CPD, park. lot | DCI2000-00002 | 24-46-23 | CPD | CPD |
| FMB-01-03 | 2001/01/22 | John Richard | Rusty's, 237-320 Old San Carlos | C-1 to CPD | DCI2000-00051 | 24-46-23 | DOWNTOWN | CPD |
| FMB-01-08 | 2001/04/09 | Edward F. Streit, Trustee | Dockside Inn, 1130 First St. | C-1 to CPD | DCI2000-00059 | 24-46-23 | DOWNTOWN | CPD |
| FMB-99-05 | 1999/02/08 | Estero Bay Hotel Co. | Matanzas Inn, 414-416 Crescent | CPD & C-1 to CPD | 95-01-003.02Z 02.01 | 19-46-24 | DOWNTOWN | CPD |
| FMB-00-09 | 2000/02/14 | Lighthouse Island Resort | Lighthouse Island Resort | C-1 to CPD | 99-09-352.02Z | 24-46-23 | DOWNTOWN | CPD |
| FMB-02-07 | 2002/04/15 | Seafarer's 1997 & 2000 | Seafarer's Plaza | CPD & C-1 to CPD | DCI2000-00047 | 24-46-23 | DOWNTOWN | CPD |
| FMB-99-26 | 1999/06/21 | Carslake/Diamondhead | Estero Bl. at Virginia | vacated CPD to CPD | 99-03-069.02Z 01.01 | 19-46-24 | DOWNTOWN | DOWNTOWN |
| FMB-00-28 | 2000/06/12 | FMB Fire Control District | Headquarters, 100-102 Voorhis | TFC-2 to CPD | DCI2000-00027 | 29-46-24 | CPD | CPD |
| FMB-02-04 | 2002/01/14 | Darin Smith | White Cap, 4631-4731 Estero Bl. | RS-1 & RM-2 to RPD | DCI2001-00029 | 29-46-24 | RPD | RPD |
| FMB-98-11 | 1998/05/05 | James Figuerado | Publix, 4791 Estero Bl. | RM-2 to CPD | 96-02-186.02Z 01.01 | 28-46-24 | CPD | CPD |
| FMB-98-11a | 1998/05/05 | James Figuerado | Publix, 4791 Estero Bl. | RM-2 to CPD | 96-02-186.02Z 01.01 | 28-46-24 | CPD | CPD |
| FMB-01-06 | 2001/02/12 | Mid-Island Marina | Publix, 4791 Estero Bl. | amend CPD (signs) | DCI2000-00078 | 28-46-24 | CPD | CPD |
| FMB-98-10 | 1998/04/20 | Spas Pasev | Sandbar Resort | RM-2 to CPD | 95-04-118.02Z 02.01 | 33-46-24 | CPD | CPD |
| FMB-98-10a | 1998/04/20 | Spas Pasev | Sandbar Resort | RM-2 to CPD | 95-04-118.02Z 02.01 | 33-46-24 | CPD | CPD |
| Z-95-085 | 1995/12/18 | Outrigger Resort | Outrigger Resort, 6200 Estero Bl. | RM-2 to CPD | 95-07-137.02Z | 33-46-24 | CPD | CPD |
| Z-91-102 | 1991/12/9 | Captains Bay | Captains Bay, 6661 Estero Bl. | RS-1& CT to RPD | 91-10-15-DCI | 03-47-24 | RPD | RPD |
| PD-92-020 | 1992/11/12 | Captains Bay | Captains Bay, 6661 Estero Bl. | adm. amend RPD | 91-10-015-DCI-01(a) | 03-47-24 | RPD | RPD |
| Z-93-072 | 1993/11/15 | Captains Bay | Captains Bay, 6661 Estero Bl. | amend RPD | 91-10-015-DCI-01(b) | 03-47-24 | RPD | RPD |
| FMB-97-24 | 1997/07/07 | First Union | Eckerd, 7001 Estero Bl. | CT to CPD | 96-12-206.02Z 01.01 | 03-47-24 | SANTINI | CPD |
| FMB-97-35 | 1997/10/20 | First Union (see 97-24) | Eckerd, 7001 Estero Bl. | CT to CPD | 96-12-206.02Z 01.01 | 03-47-24 | SANTINI | CPD |
| Z-93-072 | 1993/11/15 | Cap Plaza | 121 Lenell Rd. (behind Eckerd) | CN-1 to CPD | 92-3-17-DCI-1 | 03-47-24 | SANTINI | CPD |
| Z-88-268 | 1988/10/24 | Fish Tale Marina | Fish Tale Marina, 7105 Estero Bl. | C-1 & CT to CPD | 88-9-8-DCI | 03-47-24 | SANTINI | CPD |
| Z-88-268A | 1989/07/31 | Fish Tale Marina | Fish Tale Marina, 7105 Estero Bl. | clarification of CPD | 88-9-8-DCI | 03-47-24 | SANTINI | CPD |
| Z-89-043 | 1989/06/12 | Fish Tale Marina | Fish Tale Marina, 7295 Estero Bl. | amend CPD | 88-9-8-DCI(a) | 03-47-24 | SANTINI | CPD |
| PD-90-011 | 1990/04/18 | Fish Tale Marina | Fish Tale Marina, 7295 Estero Bl. | adm amend/golf | 88-9-8-DCI(b) | 03-47-24 | SANTINI | CPD |
| HEX decision | 1993/12/17 | Fish Tale Marina | Fish Tale Marina, 7105 Estero Bl. | outdoor seating | 93-12-09-SP-05 | 03-47-24 | SANTINI | CPD |
| Z-94-013 | 1994/05/16 | Fish Tale Marina | Fish Tale Marina, 7105 Estero Bl. | amend CPD | 88-9-8-DCI(c) | 03-47-24 | SANTINI | CPD |

ATTACHMENT C

ATTACHMENT D

VILLAGE

Subdivision IV. VILLAGE Zoning District

Sec. 34-691. Purpose.

The purpose of the VILLAGE district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

- (1) The existing residences and businesses in the VILLAGE district may continue in full operation and may be renovated in accordance with §§ 34-692 and 34-694.
- (2) As an alternative, the VILLAGE district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. District map and applicability.

The area indicated on Figure 34-11 is the outer boundary of the VILLAGE district.

- (1) Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the VILLAGE district, even if the property is shown on Figure 34-11.
- (2) For properties zoned into the VILLAGE district rather than in a PD district, existing residences and businesses may continue in full operation and may be modified in accordance with the following regulations:
 - a. **Continued use of existing mobile homes and recreational vehicles.** The continued use of existing mobile homes and recreational vehicles is permitted in accordance with § 34-694 below.
 - b. **Continued use of and renovations, enlargements, or replacement of existing permanent buildings.**
 1. Existing permanent buildings may be renovated, enlarged, or replaced as follows:
 - a- Renovations and/or physical enlargement are permitted provided

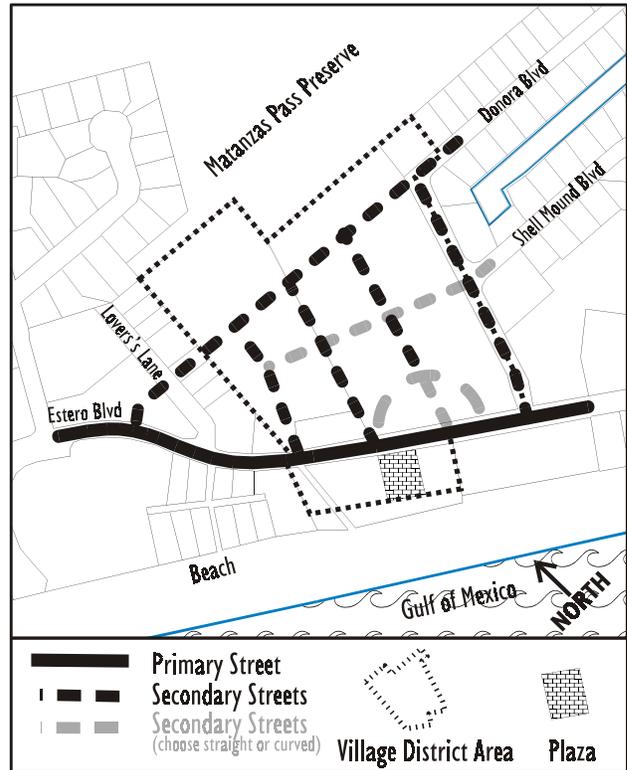


Figure 34-11

the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code; or

- b- Replacement buildings are permitted provided that they do not increase the existing floor area ratio, as that term is defined in § 34-633; or
- c- Other renovations, enlargements, and/or replacements are permitted provided they comply with those regulations for the CB zoning district that are found in §§ 34-704–34-706.
2. Allowable uses in these buildings are the same as provided in § 34-703(a) for the CB zoning district.
3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

VILLAGE

(3) *Transformation of existing mobile home and recreational vehicle parks.* Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the VILLAGE district.

- a. The following concepts are expected in this redevelopment process:
1. traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
 2. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
 3. low-rise townhouses or apartments allowed elsewhere on the site;
 4. walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
 5. open space that allows views to be maintained from Estero Boulevard to the Gulf;
 6. mixed commercial and residential uses along the Bay side of Estero Boulevard;
 7. quiet internal street connections to the north and south;
 8. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
 9. a site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.
- b. At the option of landowners in the VILLAGE district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 and generally in accordance with either of the conceptual site plans found in the Community Design Element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 shall have no effect.

Sec. 34-693. Regulations to obtain development order for pre-approved redevelopment option.

(a) *Purpose.* This section provides detailed regulations for the pre-approved redevelopment option if that option is chosen by landowners, as described in § 34-692(3).

(b) *Allowable uses.* Allowable uses in the VILLAGE district are defined in Tables 34-1 and 34-2. If a development order is issued pursuant to § 34-692(3), the additional uses in the “Open” subgroup of Table 34-1 for the residential, lodging, office, and retail groups will be permitted on property that is subject to the development order.

(c) *Streets.* Secondary streets shall be laid out and dedicated to the public generally in accordance with Figure 34-11 to improve circulation for vehicles and pedestrians.

- (1) Figure 34-11 provides two acceptable options for the new network of secondary streets.
- (2) Under either option, the street design must incorporate the extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public.

OPTION ONE: (original proposal, with new closing sentence)

(d) *Plazas.* A plaza at least 100 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water. This plaza need not be available for public use.

OPTION TWO: (landowner request & LPA recommendation & new closing sentence)

(d) *View corridor.* A view corridor at least 50 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water. This view corridor need not be available for public use.

(e) *Build-to lines established.* Build-to lines (see § 34-662) for all streets shall be 0 feet to 10 feet.

(f) *Setback lines established.* Setback lines (see § 34-662) are established as follows:

VILLAGE

- (1) For principal buildings, minimum setbacks are as follows:
 - a. Rear setbacks: 20 feet
 - b. Water body setbacks: see § 34-637(d)(3).
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

(g) **Building frontage.** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-11:

- (1) For primary streets, building frontages shall be at least 50% of the lot frontage. This percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf.
- (2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).

(h) **Building height.** Building heights (see § 34-631) shall be limited to:

- (1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories. However, for mixed-use buildings and for elevated buildings without enclosed space on the first story, the maximum height is three stories (but still limited to 30 feet above base flood elevation).
- (2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.

(i) **Floor area ratio (FAR).** Floor area ratios shall not exceed 1.2.

(j) **Residential density.** Policy 4-F-2-iii of the Fort Myers Beach Comprehensive Plan allows up to 15 dwelling units per acre for redevelopment in accordance with this section. Any land used for roadway or access purposes may be included in this density computation.

(k) **Guest units.** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(l) **Circulation and parking.** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

- (1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial building design guidelines; and
- (2) Driveways leading to under-building parking spaces must connect to a secondary street or an alley and may not be accessed from a primary street or pedestrian plaza.

(m) **Commercial design standards.** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.

(a) **Definitions.** These phrases, when used in this subdivision, shall have the following meanings:

Park trailer means a transportable recreational vehicle which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. “Park trailers” have a statutory definition in F.S. § 320.01(b) which may change; the use of the term “park trailer” in this subdivision is intended to change with any such statutory changes so as to be consistent with state law.

Transient RV park means a recreational vehicle development designed, intended for, or used by relatively short-stay visitors (transient guests) who bring their *transient* recreational vehicle with them and remove it at the end of their visit. The individual recreational vehicle site is then ready for another visitor. [definition moved from § 34-2]

Transient recreational vehicle unit means a camping trailer, truck camper, motor home, or travel trailer, motor home, or van conversion (as those terms are defined by F.S. § 320.01(b)) which is

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brought to the transient recreational vehicle park by the user and is removed from the park at the end of the user's visit. Park trailers are not considered to be transient recreational vehicles. *[definition moved from § 34-2]*

(b) 1987 site plan approvals. Lee County approved site plans for Gulf View Colony and Red Coconut in 1987 to formally acknowledge the right to replace mobile homes and non-transient recreational vehicles in portions of each park in accordance with previous regulations. These site plans were approved in accordance with Lee County Ordinance 86-36. The Town of Fort Myers Beach will continue to recognize those rights, which are incorporated into the regulations set forth in this section.

- (1) Sites in Gulf View Colony and Red Coconut or lots located within a park shall not be reconfigured or reduced in dimension so as to increase the density for which the park was originally created. *[relocated from § 34-3272(3)c.3]*
- (2) No division of any parcel may be permitted which creates a lot with width, depth or area below the minimum requirements stated in this chapter, provided that Contiguous sites lots of record may be combined and redivided to create larger dimension sites lots as long as such recombination includes all parts of all sites lots, and existing allowable density is not increased, and all setback requirements are met. *[previous sentence moved from § 34-3272(3)b]*
- (3) ~~Sec. 34-2351. Use as permanent residence.~~ The use of a recreational vehicle or park trailer type unit by a permanent resident as a permanent residence, as the terms are defined in F.S. ch. 196, is ~~has been~~ expressly prohibited as of ~~since~~ September 16, 1985. Persons who have established permanent residency within a recreational vehicle park as of September 16, 1985, are exempt from the residency provisions of this section, provided that the proof of residency was established by an affidavit filed with the Lee County prior to October 31, 1985. *[subsection moved from § 34-2351]*
- (4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, park model, or recreational vehicle located

~~within a mobile home or recreational vehicle park, regardless of lot size.~~ *[moved from § 34-3204]*

(c) **Gulf View Colony:** A site plan for Gulf View Colony was approved by Lee County on February 11, 1987, which showed 59 mobile homes sites plus common recreational features. This plan was drawn by G. H. Taylor and was dated January 10, 1987.

- (1) Lee County approved the replacement of a mobile home or park trailer on all 59 sites. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
- (2) Replacement of mobile homes or park trailers on these sites must meet the following regulations:
 - a. All units mobile homes or recreational vehicles shall have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit shall be permitted to have eaves which encroach not more than one foot into the ten-foot separation. *[subsection moved from § 34-3272(3)c.2]*

OPTION ONE: (original proposal)

- b. Replacement mobile homes, park trailers, and additions must meet the floodplain elevation requirements of § 6-472(2), including the limitations on replacements where past flooding has caused "substantial damage" on specific sites.

OPTION TWO: (landowner request)

- b. Replacement mobile homes, park trailers, and additions must meet the floodplain elevation requirements of § 6-472(2), except that the limitations on replacements where past flooding has caused substantial damage on specific sites shall only apply under the first definition of "substantial damage" in § 6-405; the second definition shall not apply in the VILLAGE zoning district.

- c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the

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- tie-down and skirting requirements of that section.
- d. One freestanding storage shed or utility room, not exceeding 120 feet in floor area and ten feet in height, may be permitted in any type B (nontransient) park provided that:
1. No storage shed or utility room shall be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home or park trailer recreational vehicle under separate ownership; and
 2. The shed or room is properly tied down and complies with all building code requirements. *[moved from § 34-786(b)]*
- e. Additions to mobile homes or park trailers recreational vehicles may be permitted in nontransient parks on permanent recreational vehicles provided that:
1. The addition shall not be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home, park trailer, or addition thereto under separate ownership. The individual recreational vehicle site meets or exceeds the minimum required lot size set forth in this division;
 2. The total floor area of any additions, excluding open decks and stair landings, shall not exceed the total floor area of the mobile home or park trailer, recreational vehicle; and
 3. The maximum height of additions shall not exceed one story or the height of the mobile home or park trailer, recreational vehicle, whichever is less.
 4. Open decks, up to 120 square feet in area, may be permitted provided all setback requirements are met. Stair landings that are incorporated into a deck shall be calculated in the square footage of the deck.
 5. Stairs or stair landings, which are attached to an addition, and which are not incorporated into an open deck, may be permitted to encroach three feet into the side and rear setbacks. No stair landing shall exceed 12 square feet in area. *[moved from § 34-788]*
- (d) **Red Coconut:** Parts of a site plan for the Red Coconut were approved by Lee County on June 2, 1987. This plan was drawn by David Depew and was dated May 20, 1987.
- (1) **Sites approved in 1987.** Lee County approved the replacement and potential enlargement of a mobile home or park trailer on each of the following sites: A7-A9, A12-A15, B12, B14-B16, C1, C7, D1, D2, D6, D8-D17, E1-E16, E18-E20, F1-F9, and G2-G12.
- a. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
 - b. Replacement mobile homes or park trailers on these sites must follow the same regulations as provided in § 34-694(c)(2); however, if a mobile home or park trailer incurs “substantial damage” as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).
- (2) **Sites not approved in 1987.** Some smaller sites that also contained a mobile home or non-transient recreational vehicle were not approved for larger units in 1987: AA, A1-A6, A10-A11, A16-A17, B1-B11, B13, C2-C6a, C8-C10, D3-D5, D7-D7A, E17, K2, P2-P3, Z2-Z3, and 1-6 on the bay side of Estero Boulevard. Units on these sites may be replaced only by a unit of equal or smaller size, in accordance with the following regulations:
- a. Any mobile home or non-transient recreational vehicle unit which has been lawfully placed on these sites on any rental lot within any rental park, regardless whether the park has been converted to either cooperative or condominium ownership prior to June 25, 1986, may be replaced by a unit mobile home or park trailer of equal or smaller size. The director may use historical aerial photographs, or previous county or town permits if available, to verify that a replacement unit is not larger than a previous lawful unit upon proof that the placement of the unit was lawful. Such proof may consist of copies of official tax records, tag

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registrations or county permits, or may be by affidavit or any other competent evidence. No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted.
[moved from § 34-3204]

- b. Replacement mobile homes and park trailers must meet the floodplain elevation requirements of § 34-694(c)(2)b; however, if a mobile home or park trailer incurs “substantial damage” as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).
- c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.
- d. One storage shed or utility room may be permitted if in compliance with § 34-694(c)(2)d.
- e. Additions may not be constructed.
- (3) **Transient RV park.** The remainder of the sites shown on this plan may continue in operation as a transient RV park. These sites can be identified on the 1987 site plan as follows: on the Gulf of Mexico, sites 1-53; on the bay side of Estero Boulevard, sites CE1-CE7, CWOO-CW6, CRD, H1-H10, J1-J10, K1, K3-K18, L1-L4, M1-M4, N1-N14, P1, R1-R3, Y-Y-Y-Y, and Z1. The following regulations apply to these 147 sites:
- a. Transient recreational vehicles must comply with the floodplain regulations found in § 6-472(3).
- b. Additions may not be constructed onto transient recreational vehicles.
- c. Storage sheds and other accessory structures may not be placed on individual sites.
- d. All travel trailers, motor homes or camping trailers left unattended for more than two weeks during the months of June through December. For purposes of this section only, the term “unattended” shall be interpreted to mean that the owner of the unit has not provided for a person to be responsible for the unit in the event of a

hurricane watch alert as set forth in the following subsection ~~(2)b~~ of this section.
[moved from § 34-762(2)i.2.a]

- e. All travel trailers, motor homes or camping trailers shall be tied down within 48 hours of the issuance of a hurricane watch for the town county by the National Hurricane Center. Travel trailers, motor homes or camping trailers not tied down shall be removed from the county within 48 hours of such a hurricane watch, or placed within an approved off-lot storage area. *[moved from § 34-762(2)i.2.b]*

Secs. 34-695--34-700. Reserved.

| <i>(this chart is based on the February 24, 2003 draft)</i> | OPTION ONE | OPTION TWO | OPTION THREE | OPTION FOUR | OPTION FIVE | OPTION SIX |
|--|--|--|-------------------------------------|---------------------------------------|--|-------------------|
| | | <i>Original</i> <i>LPA maj.</i> | <i>Original</i> <i>LPA min.</i> | | | |
| WOULD RESTRICTIONS BE IMPOSED ON WEEKLY RENTALS IN MOST SINGLE-FAMILY NEIGHBORHOODS? | YES (only one per month allowed) | YES (only one per month allowed) | no | YES (monthly stay required) | YES (only one per month allowed) | no |
| Would existing weekly rental units get specific protection? | no | YES | — | YES | no | — |
| Must have existed by what date for protection? | — | 10/22 '02 <i>effective date</i> | — | 5/21 '02 | — | — |
| Does protection expire on a fixed date? | — | no | — | YES (1/1 '08) | — | — |
| Can protection be transferred to future owners? | — | YES no | — | no | — | — |
| Weekly rentals exempted if owner present/adjacent? | no | no | — | no | YES | — |
| WOULD MORE THAN ONE FAMILY BE ALLOWED TO SHARE A HOME IN SINGLE-FAMILY NEIGHBORHOODS? | no | no | <i>not in SF home</i> YES | no | no | no |
| WOULD A CODE OF CONDUCT BE IMPOSED? | no | YES | YES | YES | no | YES |
| AUTOMATIC “SUNSET” PROVISION? | no | no | no YES | no | no | no |
| WOULD REGISTRATION BE REQUIRED FOR RENTAL UNITS? | | | | | | |
| For existing weekly rentals in single-family zones: | — | YES | YES | YES | — | no |
| For all weekly rentals (except condos): | no | no | YES | no | no | no |
| For all rentals (except condos): | no | no | no YES | no | no | no |

ATTACHMENT F

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

| | <i><u>Residential</u></i> | <i><u>Lodging</u></i> | <i><u>Office</u></i> | |
|---|---|---|---|---|
| Restricted Ⓡ | <u>Community residential home</u> P <u>Dwelling unit, single-family</u> P <u>Home care facility</u> P AS ACCESSORY USES: <u>Accessory apartment (1)</u> SE (see § 34-1177) <u>Accessory apartment</u> EO (see § 34-1178) <u>Residential accessory uses</u> P <u>Temporary mobile home</u> TP (§ 34-3046) | <u>Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week</u> P (see §§ 34-2391-2410 for rules and exceptions) AS ACCESSORY USES: | AS ACCESSORY USES: <u>Home occupation (no outside help)</u> P <u>Home occupation (with outside help)</u> AA | Restricted Ⓡ |
| Limited (plus R uses) Ⓡ | <u>Dwelling unit: two-family (1)</u> P live/work (see § 34-1773) SE <u>Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)</u> EO AS ACCESSORY USES: <u>Accessory apartment (1)</u> P (see § 34-1177) | <u>Rental of any permitted dwelling unit to a single family for periods of one week or longer</u> P (see §§ 34-2391-2410 for rules) SE <u>Bed & breakfast inn</u> SE (see § 34-1801) AS ACCESSORY USES: <u>On-premises consumption of alcoholic beverages</u> AA/SE (see division 5 of article IV) | AS ACCESSORY USES: <u>Administrative office</u> P | Limited (plus R uses) Ⓡ |
| Open (plus R & L uses) Ⓢ | <u>Assisted living facility</u> P (see § 34-1411) <u>Dwelling unit: multiple-family</u> P live/work (see § 34-1773) P <u>Rooming house</u> P <u>Timeshare units</u> P AS ACCESSORY USES: <u>Golf course</u> EO <u>Recreation facility: private on-site</u> P private off-site SE <u>Subordinate commercial uses</u> P (see § 34-3021) | <u>Bed & breakfast inn</u> P (see § 34-1801) <u>Hotel/motel</u> P (see § 34-1801) <u>Rental of any permitted dwelling unit or guest unit for periods of one day or longer</u> P <u>Resorts</u> P AS ACCESSORY USES: <u>Resort accessory uses</u> P <u>Personal services</u> P <u>Subordinate commercial uses</u> P (see § 34-3021) | <u>Automobile rental</u> SE <u>Health care facility</u> P <u>Offices, general or medical</u> P <u>Personal services</u> P <u>Wholesale establishment</u> SE AS ACCESSORY USES: <u>Commercial accessory uses</u> P <u>Drive-through, Type 1 (2)</u> P <u>Subordinate commercial uses</u> P (see § 34-3021) | Open (plus R & L uses) Ⓢ |

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).
 (2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the Downtown zoning district except as provided in § 34-676(f), whether the subject property is classified in the Downtown zone or in a Commercial Planned Development zone. See also § 34-620(f)(4) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

| | <u>Retail</u> | <u>Marine</u> | <u>Civic</u> | |
|---|--|---|---|---|
| Restricted Ⓜ | | | <u>Beach or bay access</u> P <u>Essential services</u> (see § 34-1612(a)) P <u>Hidden path</u> P <u>Park, neighborhood</u> P AS ACCESSORY USES: <u>ATM</u> P | Restricted Ⓜ |
| Limited <i>(plus R uses)</i> Ⓛ | <u>Dwelling unit:</u> <u>work/live (see § 34-1774)</u> SE <u>Membership organization</u> SE <u>Recreation facilities,</u> <u>commercial</u> SE <u>Parking lot, seasonal</u> (see § 34-2022) TP <u>Temporary uses</u> (see §§ 34-3041–3050) SE AS ACCESSORY USES: <u>On-premises consumption of</u> <u>alcoholic beverages (see</u> <u>§§ 34-1261–1290)</u> AA/SE | <u>Dock (for use by water taxi or</u> <u>water shuttle)</u> P <u>Marina</u> EO/SE <u>Parasailing operations office</u> SE <u>Personal watercraft operations</u> <u>office</u> SE <u>Rental of beach furniture</u> P AS ACCESSORY USES: <u>Dwelling unit, caretaker</u> P <u>Dock (may be leased to non-</u> <u>occupants of principal use)</u> P | <u>Communication tower</u> (see § 34-1441–1550) SE <u>Day care center, adult or child</u> SE <u>Essential service building</u> (see § 34-1612(b)) SE <u>Essential service equipment</u> P <u>Recreation facility:</u> <u>private off-site</u> SE <u>public</u> P <u>Transit terminal</u> SE AS ACCESSORY USES: <u>Dwelling unit, caretaker</u> P <u>Restaurant, accessory to</u> <u>private rec. facilities only</u> SE | Limited <i>(plus R uses)</i> Ⓛ |
| Open <i>(plus R & L uses)</i> Ⓞ | <u>Automobile repair</u> SE <u>Bar or cocktail lounge</u> AA/SE <u>Car wash</u> SE <u>Dwelling unit:</u> <u>work/live (see § 34-1774)</u> P <u>Laundromat</u> P <u>Mini-warehouse</u> SE <u>Parking lot, shared</u> <u>permanent (34-2015(2)b.)</u> SE <u>Personal services</u> P <u>Restaurant (2)</u> P <u>Retail store, small</u> P <u>Retail store, large</u> SE AS ACCESSORY USES: <u>Commercial accessory uses</u> P <u>Drive-through: (2)</u> <u>Type 1</u> P <u>Type 2</u> SE <u>Automobile fuel pumps (2)</u> SE | <u>Boat dealer</u> P <u>Marina</u> P AS ACCESSORY USES: <u>Marina accessory uses</u> P | <u>Cultural facility</u> SE <u>Day care center, adult or child</u> P <u>Park, community or regional</u> P <u>Parking lot, shared permanent</u> SE <u>Place of worship</u> P <u>Religious facility</u> SE <u>School (see § 34-2381–2383)</u> P <u>Theater</u> SE AS ACCESSORY USES: <u>Helistop</u> SE <u>Restaurant, accessory only to</u> <u>public recreation facilities</u> P <u>Subordinate commercial uses</u> (see § 34-3021) P | Open <i>(plus R & L uses)</i> Ⓞ |

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the Downtown zoning district except as provided in § 34-676(f), whether the subject property is classified in the Downtown zone or in a Commercial Planned Development zone. See also § 34-620(f)(4) regarding the prohibition on restaurant drive-throughs.

Table 34-2 — Use Sub-Groups Permitted in Each Zoning District ¹

| | <u>Residential</u> | <u>Lodging</u> | <u>Office</u> | <u>Retail</u> | <u>Marine</u> | <u>Civic</u> |
|---|---|------------------|------------------|------------------|---------------|--------------|
| | Use Groups and Sub-Groups (Restricted, Limited, Open) | | | | | |
| RS <u>Residential Single-family</u> | (R) | (R) | (R) | = | (R) | (R) |
| RC <u>Residential Conservation</u> | (L) | (L) | (R) | = | (R) | (R) |
| RM <u>Residential Multifamily</u> | (O) | (L) | (L) | (R) | (R) | (L) |
| CR <u>Commercial Resort</u> | (O) | (O) | (O) | (L) | (L) | (L) |
| CM <u>Commercial Marina</u> | (R) | (R) | (L) | (L) | (O) | (L) |
| CO <u>Commercial Office</u> | (O) | (L) | (O) | (L) | (L) | (O) |
| SANTOS | (L) | (L) | (O) | (L) | (L) | (L) |
| IN <u>Institutional</u> | (L) | (L) | (L) | (R) | (L) | (O) |
| CF <u>Community Facilities</u> | (R) | (R) | (L) | (R) | (L) | (O) |
| BB <u>Bay Beach</u> | — see § 34-651(b) — | | | | | |
| EC <u>Environmentally Critical</u> | — see § 34-652(d) & (e) — | | | | | |
| DOWNTOWN | (O) | (O) | (O) | (O) | (L) | (O) |
| SANTINI | (O) | (O) | (O) | (O) | (O) | (O) |
| VILLAGE | (L) ² | (L) ² | (L) ² | (L) ² | = | (L) |
| CB <u>Commercial Boulevard</u> | (O) | (L) | (L) ³ | (L) ³ | (L) | (O) |
| RPD <u>Residential Planned Dev.</u> ⁴ | (R)(L)(O) | (R)(L) | (R)(L) | (R)(L) | (R)(L) | (R)(L) |
| CPD <u>Commercial Planned Dev.</u> ⁴ | (R)(L)(O) | (R)(L)(O) | (R)(L)(O) | (R)(L)(O) | (R)(L)(O) | (R)(L)(O) |

Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).

Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office and retail uses in the Open Sub-Group under specified conditions.

Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.

Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.

DIVISION 32-A. SHORT-TERM RENTALS

OPTION ONE: *[original proposal]*

Sec. 34-2391. Restrictions on continuous weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on continuous weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
- (2) Dwellings units on property that qualifies for either of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392–34-2410. Reserved.

OPTION TWO: *[workshop proposal]*

Sec. 34-2391. Restrictions on continuous weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on continuous weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.

Variation A: (original proposal)

- c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing continuous weekly rentals as of October 22, 2002, when registered in accordance with § 34-2392.

Variation B: (LPA recommendation)

- c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing continuous weekly rentals as of *[insert effective date of this provision]*, when registered in accordance with § 34-2392.
[NOTE: this same change would also be made in § 34-2392(a), (b)(2), and (b)(3).]

- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392. Registry of certain pre-existing continuous weekly rentals.

(a) Dwelling units in certain zoning districts are not permitted to be rented to more than a single family during any one-month period due to restrictions found in Tables 34-1 and 34-2. The owner of any such dwelling unit that was being lawfully used for continuous weekly rentals as of October 22, 2002, may apply for registration under this section to continue continuous weekly rentals.

- (1) Upon verification by the town and placement of such dwelling units on a registry of pre-existing continuous weekly rentals, the owners of registered dwelling units may continue to rent those units to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Variation C: (original proposal)

- (2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.

Variation D-1: (LPA recommendation)

- (2) This right shall be extinguished when the property is transferred to subsequent owners.

Variation D-2: (concept discussed by LPA, but not recommended)

- (2) This right shall be extinguished when the property is transferred to subsequent owners, with the following exceptions:
 - a. This right shall not be extinguished when a property transfer is the result of the death of an owner.
 - b. A property transfer shall be deemed to have occurred if the title is held by a corporation and majority control of the corporation is transferred to a different party, except when such transfer is the result of the death of a stockholder, in which case this right shall not be extinguished.

- (3) If continuous weekly rentals of a particular dwelling unit are terminated for any reason for any 12-month period, continuous weekly rentals may not thereafter be reinstated in that dwelling unit.
- (4) Dwelling units on land that is not affected by the restrictions in Tables 34-1 and 34-2 limiting rentals to no more than a single family during any one-month period should not be submitted for registration. Such units will not be placed on the registry of pre-existing continuous weekly rentals.

(b) Applications for registration of lawful pre-existing continuous weekly rental units shall be

submitted to the town manager by [insert date here: 3 months after effective date of this provision]. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant's mailing address and telephone number.
- (2) Name of current property owner (and previous owner, if property has been transferred since October 22, 2002).
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing continuous weekly rental use of each dwelling unit in the application as of October 22, 2002. Such evidence must include
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a "resort dwelling" or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County's 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida's 6% sales tax on rentals of each dwelling unit.
- (6) If desired, other evidence of lawful pre-existing continuous weekly rentals of the dwelling unit (such evidence is not required for registration but may include rental contracts, tax returns, etc.).
- (7) A local telephone number with a contact that is available 24 hours a day.
- (8) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

(c) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing continuous weekly rental unit or whether the dwelling unit does not qualify for such registration. Reasons for disqualification will be stated in the written notice.

- (1) All applications and written responses are public records and will be available for inspection at town hall.
- (2) Registrants may supplement their application at any time to provide a different local telephone number with a contact that is available 24 hours a day.

(d) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

Sec. 34-2393. Code of conduct for short-term rentals.

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing continuous weekly rentals and also those rentals between one week and one month that are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.

- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(b) Operators are required to provide guests with the town’s code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing continuous weekly rentals (see § 34-2392), the following additional requirements shall apply:

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
 - a. Failure to maintain licensure or any other provisions of ch. 509.
 - b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement hearing examiner:
 - a. First violation: \$250 fine.
 - b. Second violation: \$500 fine.
 - c. Third violation: six-month suspension of registration under § 34-2392.
 - d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Sec. 34-2395–34-2410. Reserved.

RE D R A F T

OPTION THREE: *[task force proposal]*

NOTE – if Option Three is chosen:

- (1) The following restriction in Table 34-1 of this code (page 76) in the “Restricted” sub-group would be eliminated as follows: “Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)”
- (2) The following restriction in Table 34-1 would be moved from the “Limited” sub-group to the “Restricted” sub-group: “Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)”

Sec. 34-2391. Purpose and intent.

The purpose and intent of this division is to:

- (1) Provide safe, clean, and comfortable accommodations to guests staying in short-term rental units;
- (2) Provide information to guests on relevant town regulations;
- (3) Educate guests about local standards of respectful conduct in residential neighborhoods; and
- (4) Create and protect a compatible atmosphere between short-term rental properties, resident property owners, and residential neighborhoods.

Sec. 34-2392. Definitions.

Guest means any patron, customer, tenant, lodger, boarder, or occupant of a short-term rental unit.

Operator means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a short-term rental unit.

Variation E: (original proposal)

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented more than three times in a calendar year for periods of one week to one month, or which is advertised or held out to the public as a place regularly rented for periods of one week to one month.

Variation F: (LPA minority position)

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented for periods of one week to one year, or which is advertised or held out to the public as a place regularly rented for periods of one week to one year.

Sec. 34-2393. State licensure and town registration.

(a) All short-term rental units must be licensed by the state of Florida as a “resort dwelling” or a “public lodging establishment,” pursuant to F.S. § 509.241.

(b) In addition to licensure with the state of Florida, within 3 months of *[insert effective date of this provision]*, the operator of each short-term rental unit located in the town must submit a short-term rental license application to the town, and within an additional 90 days must have obtained registration from the town. Thereinafter, a new registration application must be completed annually or upon change of ownership or property manager. The license application shall include:

- (1) Name of the operator, if different than the property owner, and the operator’s mailing address and telephone number.
- (2) A local telephone number with a contact that is available 24 hours a day.
- (3) Name of current property owner and evidence of ownership.
- (4) Street address and STRAP number of parcel.
- (5) Number of rental dwelling units at that address that are part of the application.
- (6) Evidence that each dwelling unit is licensed by the state of Florida as a “resort dwelling” or as a public lodging establishment, in accordance with F.S. § 509.241.

- (7) Notarized signature of the operator consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

Sec. 34-2394. Term of registration and fee.

Each registration is valid for one year, renewable by January 1 of each calendar year. The operator must notify the town within 30 days of any change in the telephone number of the local contact or any change in the operator of any registered short-term rental unit.

- (1) The application and fee shall not be deemed late until January 31 of the applicable calendar year.
- (2) The annual application fee shall be \$120 per short-term rental unit.
- (3) The fee shall be pro-rated for new applications made after January 31; renewal registrations shall not be prorated.
- (4) Failure to receive a license or complete a renewal by January 31, in combination with the use of a dwelling unit for short-term rentals, shall be a violation of this code.

Sec. 34-2395. Acknowledgment by guests of code of conduct.

The operator is required to provide guests with the town's code of conduct for short-term rentals (see § 34-2396).

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

Sec. 34-2396. Code of conduct for short-term rentals.

The following code of conduct applies to operators and guests of all short-term rental units:

Variation G: (original proposal)

- (1) ***Maximum Occupancy:*** Occupancy of each short-term rental unit shall not exceed more than 2 guests for every bedroom in each unit, plus 2 additional guests. Occupancy of single-family homes must also be consistent with the definition of "family" that is found in § 34-2 of the Fort Myers Beach land development code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.

Variation H: (LPA minority position)

- (1) ***Maximum Occupancy:*** Occupancy of each short-term rental unit shall not exceed more than 2 guests for every bedroom in each unit, plus 2 additional guests.
- (2) ***Refuse Collection:*** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) ***Quiet Hours:*** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) ***Mandatory Evacuations:*** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

Sec. 34-2397. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Violations of F.S. ch. 509 by an operator shall also be considered to be violations of this division as follows:

- (1) Failure to maintain licensure or any other provisions of ch. 509.
- (2) Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.

(c) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(d) Violations of this division by a guest shall subject the guest to the general penalty provisions of this code.

(e) Violations of this division by an operator or any guests of that operator shall subject the operator to cumulative penalties. This penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid by the operator or whenever a finding of violation is made by a judge or code enforcement hearing examiner:

- (1) First violation: \$250 fine.
- (2) Second violation: \$500 fine.
- (3) Third violation: six-month suspension of all registrations.
- (4) Fourth violation: two-year suspension of all registrations.

After any period of three years during which an operator has no fines imposed or paid and no formal findings of violations of this division, the next violation by the operator shall be deemed to be the first violation for purposes of this section.

Variation I: (original proposal)
Sec. 34-2398–34-2410. Reserved.

Variation J: (LPA minority position)
Sec. 34-2398. Sunset provision.

Division 32-A of this code regarding short-term rentals shall be automatically repealed on *[insert date here: 5 years after effective date of this provision]*, unless extended by the town council by an amendment to this code. However, violations of this division prior to such repeal shall remain as violations of this code.

Sec. 34-2399–34-2410. Reserved.

RAFT

OPTION FOUR: *[Neighbors for Neighborhoods proposal]*

NOTE – if Option Four is chosen: *The following restriction in Table 34-1 of this code (page 76) in the “Restricted” sub-group would be modified as follows: “Rental occupancy of any permitted dwelling unit ~~to~~ by a single family for a period of one month or longer during any one-month period, with a minimum stay of 7 days (see §§ 34-2391–2410 for rules and exceptions)”*

Sec. 34-2391. Exceptions to short-term rental restrictions.

Table 34-2 restricts the rental occupancy of any permitted dwelling unit in certain zoning districts by a single family for a period of one month or longer (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on short-term rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
 - c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing weekly rentals as of May 21, 2002, when registered in accordance with § 34-2392.
- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, in lieu of the monthly minimum rental period that would otherwise have applied.

Sec. 34-2392. Registry and amortization of certain pre-existing short-term rental units.

(a) The Town of Fort Myers Beach hereby provides a limited amortization period for certain dwelling units that would otherwise be restricted immediately by Table 34-2 to rentals to a single family for periods of one month or longer. This amortization period applies only to dwelling units that are recognized by the Town of Fort Myers Beach as having had regular weekly rentals as of May 21, 2002.

(b) In order to qualify for this limited amortization period, the owner of any such dwelling unit that was being lawfully used for weekly rentals as of May 21, 2002, may apply for registration under this section.

- (1) Upon verification by the town and placement of any such dwelling unit on a registry of pre-existing short-term rentals, the owners may continue to rent those units for to a single family for period of one week or longer until January 1, 2008, as long as the dwelling unit remains licensed.
- (2) This right is limited to the owners of the property as of May 21, 2002, and shall not be transferable to subsequent owners.
- (3) Dwelling units on land that does not require or qualify for the amortization period should not be submitted for registration. Such units will not be placed on the registry of pre-existing short-term rentals.
- (4) If short-term rentals of a particular dwelling unit are terminated for any reason for any 12-month period, short-term rentals may not thereafter be reinstated in that dwelling unit.

(c) Applications for registration of lawful pre-existing weekly rentals shall be submitted to the town manager by *[insert date here: 3 months after effective date of this provision]*. Each application must include:

- (1) Name of the applicant, if different than the property owner, and the applicant’s mailing address and telephone number.
- (2) Name of current property owner and proof of ownership on May 21, 2002.
- (3) Street address and STRAP number of parcel.
- (4) Number of rental dwelling units at that address that are part of the application.
- (5) Evidence of lawful pre-existing weekly rentals of each dwelling unit in the application as of May 21, 2002. Such evidence must include
 - a. Evidence that each dwelling unit was licensed by the state of Florida as a “resort dwelling” or as a public lodging establishment, in accordance with F.S. § 509.241.
 - b. Evidence of regular payment of Lee County’s 3% tourist development tax on rentals of each dwelling unit.
 - c. Evidence of regular payment of Florida’s 6% sales tax on rentals of each dwelling unit.

- (6) If desired, other evidence of lawful pre-existing weekly rentals of the dwelling unit (such evidence is not required for registration but may include rental contracts, tax returns, etc.).
- (7) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.
- (8) The name, address, and local telephone number of the rental manager with assurance that a contact is available 24 hours per day, seven days a week for the purpose of promptly responding to complaints.
- (9) The initial application fee for pre-existing short-term rental shall be \$120 per rental unit.

(d) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing short-term rental or whether the dwelling unit does not qualify for registration. Reasons for disqualification will be stated in the written notice. All applications and written responses are public records and will be available for inspection at town hall.

(e) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

(f) A notice of vacation rental, including the contact information in § 34-2392(c)(8), will be sent by the town to all property owners located within 300 feet of each dwelling unit that is approved for registration under this division.

Sec. 34-2393 Terms of registration and fee.

(a) The initial registration and each renewal of a lawful pre-existing short-term rental is valid for one year, renewable by January 1 of each calendar year.

The renewal application must contain:

- (1) Any changes to the initial application information described in § 34-2392(c).
- (2) An affidavit stating that weekly rentals of the dwelling unit have not terminated for any reason for any 12-month period since May 21, 2002.
- (3) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the renewal application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.
- (4) The annual renewal fee shall be \$120 per short-term rental unit.

(b) Renewal applications shall be processed using the procedures found in § 34-2392(d)–(f).

Sec. 34-2394. Code of conduct for short-term rentals.

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing short-term rentals and also those rentals between one week and one month that are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or

property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.

- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2395. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing short-term rental units (see § 34-2392), the following additional requirements shall apply:

- (1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
- a. Failure to maintain licensure or any other provisions of ch. 509.
- b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement hearing examiner:
- a. First violation: \$250 fine.
- b. Second violation: \$500 fine.
- c. Third violation: six-month suspension of registration under § 34-2392.
- d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Sec. 34-2396–34-2410. Reserved.

OPTION FIVE: [*“adjacent owner” proposal*]

Sec. 34-2391. Restrictions on continuous weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the “Restricted” sub-group of the “Lodging” use group in Table 34-1). The following exceptions apply to this restriction:

- (1) This restriction on continuous weekly rentals does not apply to:
 - a. Any land between Estero Boulevard and the Gulf of Mexico.
 - b. Any land directly adjoining the bay side of Estero Boulevard.
 - c. Any dwelling unit where the immediate presence of a property owner can be presumed to mitigate any negative effects that might result from continuous weekly rentals. To qualify for this exception, the owner of the dwelling unit or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the dwelling unit is continuously rented for weekly periods.
- (2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392–34-2410. Reserved.

OPTION SIX: [*minimum-regulation proposal*]

NOTE – if Option Six is chosen:

- (1) The following restriction in Table 34-1 of this code (page 76) in the “Restricted” sub-group would be modified as follows: “Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)”
- (2) The following restriction in Table 34-1 in the “Limited” sub-group would be eliminated as follows: “Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)”

Sec. 34-2391. Purpose and intent.

The purpose and intent of this division is to:

- (1) Establish standards of respectful conduct in residential neighborhoods and educate guest about those standards, and
- (2) Increase communication between residential neighborhoods and operators of short-term rental units.

Sec. 34-2392. Definitions.

Guest means any patron, customer, tenant, lodger, boarder, or occupant of a short-term rental unit.

Operator means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a short-term rental unit.

Short-term rental unit means any single-family or two-family dwelling unit, or a unit in multiple family building with three or four dwelling units, which is rented more than three times in a calendar year for periods of one week to one month, or which is advertised or held out to the public as a place regularly rented for periods of one week to one month.

Sec. 34-2393. Code of conduct for short-term rentals.

(a) The following code of conduct applies to operators and guests of short-term rental units:

- (1) **Maximum Occupancy:** Occupancy of each short-term rental unit must be consistent with the definition of “family” that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit

housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.

- (2) **Refuse Collection:** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
- (3) **Quiet Hours:** Between the hours of 10:00 PM and 7:00 AM, all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
- (4) **Mandatory Evacuations:** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

- (1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
- (2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
- (3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

Sec. 34-2395–34-2410. Reserved.