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MEMORANDUM

TO: Fort Myers Beach Local Planning Agency
FROM: Bill Spikowski
DATE: June 15, 2004
**SUBJECT: LAND DEVELOPMENT CODE AMENDMENTS
CHAPTERS 1 - 2 - 6 - 14 - 27 - 34**

Attached are preliminary drafts of proposed amendments to the Land Development Code for Chapters 1, 2, 6, 14, and 27 and parts of Chapter 34. These drafts will become a major ordinance amending the Land Development Code.

The code was overhauled chapter by chapter between 1999 and 2003. Now that the code is complete, we have been discovering various errors, minor problems with implementation, and inconsistencies between chapters. The pending ordinance attempts to resolve such problems and make other timely modifications.

The Local Planning Agency is charged with preparing amendments and updates to the Land Development Code. On June 22, the LPA is being given an opportunity to review a preliminary draft of those portions of the pending ordinance that have been completed thus far. Formal public hearings on this ordinance will not take place until this fall.

CHAPTER 1

HISTORY: The original version of Chapter 1 of the Land Development Code was Lee County's version of that chapter which was adopted by the Town Charter as the code existed on the date of incorporation. Chapter 1 was completely revised by Fort Myers Beach Ordinance 02-01 in February 2004.

PROPOSED CHANGES: The only change to Chapter 1 being proposed at this time is to substitute the term "special master" for the code enforcement hearing examiner, to reflect the changes made for the remainder of this code by Ordinance 03-12.

CHAPTER 2

HISTORY: The original version of Chapter 2 of the Land Development Code was also Lee County's version of that chapter. Chapter 2 was completely revised by Fort Myers Beach Ordinance 00-11 in June 2000. Additional amendments were made to Chapter 2 through Ordinance 02-01 to clarify various provisions and to maintain consistency between Chapter 2 and other chapters of the code as they were being revised. Ordinance 03-12 replaced the hearing examiner for code enforcement with a special master.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 2:

- **§ 2-1:** A section reference is being corrected to match recent revisions to Chapter 34.
- **§ 2-52:** Unnecessary verbiage is being eliminated.
- **§ 2-306:** The fee schedules for transportation and fire impact fees are being adjusted and other minor changes are being made to match recent changes made by Lee County to its impact fee program.
- **§ 2-427:** The underlined sentence in this section first appeared in Ordinance 03-12 but wasn't underlined there. To avoid any question over its legality, it is being included here as well.

CHAPTER 6

HISTORY: The original version of Chapter 6 was also Lee County's version of that chapter. Chapter 6 was completely revised by Fort Myers Beach Ordinance 00-12 in June 2000. Additional amendments were made to Chapter 6 through Ordinance 02-01 to clarify various provisions and to maintain consistency between Chapter 6 and other chapters of the code as they were being revised.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect only Articles II and III of Chapter 6 which contain state-mandated building and coastal construction codes. Additional changes will also be proposed to Article I to address two stormwater issues: proper disposition of swimming pool water and runoff from rooftops of existing buildings.

Article II: Most of the changes to Article II are the same changes that Lee County made to its Article II to reflect the adoption of the Florida Building Code. By law, this statewide code supersedes most prior locally adopted codes (the Standard Building Code series). Certain changes, mainly administrative changes, may be made by local governments provided the technical standards in the code are not weakened. Also, § 6-112 will now identify the correct wind-borne debris region for Fort Myers Beach as required by the Florida Building Code; § 6-113 will provide a cross-reference to new outdoor lighting standards being added to Chapter 34; and § 6-114 will provide a cross-reference to NPDES erosion control standards for construction sites that are contained in Chapter 10. Division 4 of this article continues to adopt the Standard Existing Buildings Code, which until at least next year is not a part of the Florida Building Code.

Article III: Much of the content of Article III is controlled by the state as a result of the Coastal Zone Protection Act of 1985, whose relevant provisions are found in F.S. 151.52 et seq. The original legislation required local building codes to include certain provisions of the act and required local officials to enforce those provisions during the permitting process.

During the 2000 legislative session, the Coastal Zone Protection Act was modified significantly. In part due to the adoption of the Florida Building Code, many parts of the statutes were overhauled to centralize authority over building-related matters into the new code and to forbid, rather than require, local amendments to building codes. This overhaul eliminated the requirement for local land development regulations to recite portions of the Coastal Zone Protection Act, but still requires local governments to enforce the remaining rules.

Since it is difficult to enforce rules that are not published in official code books, the proposed amendments to Chapter 6 will continue to recite the remaining statutory requirements but would eliminate those that have been repealed or moved to the Florida Building Code. The remaining requirements have also been modified in a number of ways to ensure consistency with the remainder of the Land Development Code.

The proposed changes attached to this memorandum affect the following sections of Article III:

- **§ 6-331:** The introductory statement for Article III is being updated to reflect the 2000 legislation.
- **§ 6-632:** In addition to minor editing, this section is being updated to include a reference to the beach debris regulations in Chapter 14 and to conform the state regulations to certain stricter rules at Fort Myers Beach that do not allow hardened seawalls or rip-rap revetments along the beach.
- **§ 6-333:** This article uses many terms such as “beach” and “dune” that are defined in the Beach and Dune Management article of Chapter 14. To reduce confusion, the definitions of these terms would now become the same and would be contained in § 14-1. Other terms that had been defined here are no longer used in the code or are being modified slightly to be consistent with Chapters 14, 27, or 34.
- **§ 6-362:** This section had been mandated by state law but has now been rendered obsolete by the new Florida Building Code.
- **§ 6-364:** This section is being made consistent with the 2000 amendments to the Coastal Zone Protection Act and other state regulations.
- **§ 6-366:** This section is being made consistent with the 2000 amendments to the Coastal Zone Protection Act and other portions of the Land Development Code. Subsection (b) is being added to clarify what kind of “minor structures” will be permitted by the town in the EC zoning district either “by right” or upon approval of a special exception. Subsection (e) is being added as a reminder of a related rule found in Chapter 10 (a rule that was mandated by Policy 6-E-3 of the Fort Myers Beach Comprehensive Plan).
- **§ 6-368:** Obsolete references are being deleted.

Article IV: The proposed changes to Article IV (the floodplain regulations) are being adopted separately by Ordinance 04-09, being considered by the Town Council on June 30 at 9:00 A.M.

CHAPTER 14

HISTORY: The original version of Chapter 14 of the Land Development Code was also Lee County's version of that chapter. Its sea turtle lighting regulations in Article II were amended by Ordinance 98-03. Chapter 14 was then completely revised by Fort Myers Beach Ordinance 02-01 in February 2002, which added a new Article I titled "Beach and Dune Management" that incorporated the substance of Ordinance 00-10. Minor changes were also made by Ordinance 02-29.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 14:

- **§ 14-1:** This section now contains the definitions for "beach," "dune," and "dune vegetation" that are used here and in several other chapters of the code. The terms "vegetation line" and "seaward line of vegetation" are being eliminated as they are ambiguous and non-essential.
- **§ 14-5:** This section is now being amended to resolve a number of interpretation and enforcement problems with the existing regulations. The time is being changed in subsection (a) to match the time requirement in (e). The removal of beach furniture and equipment from the beach at night was inconsistently treated in subsection (a) and in §§ 27-49 and 27-51; subsection (a) now contains updated regulations that apply here and to §§ 27-49 and 27-51. Instead of vague references to "the beach," the new regulations refer to the "EC zoning district" whose landward boundary is the 1978 coastal construction control line, which is the same line that is used throughout Chapter 34 to distinguish between developable uplands and the undevelopable beachfront. Subsection (d) is being revised to allow one free-standing structure for each beach vendor to use during the day; this structure must be moved from the beach after business hours the same as is now required by § 27-51(c)(3) for parasail operators and personal watercraft vendors. Subsection (e) would forbid the dragging of beach furniture, an activity that damages the beach.
- **§ 14-6:** This section would clarify the requirement for DEP permits for beach raking and would require insurance for beach raking equipment. It would also eliminate 4x4 lumber from being dragged behind beach raking equipment, an activity that has the same smoothing and packing effects as pulling a box blade on the beach.
- **§ 14-7:** Two new sentences would clarify the regulations for research and patrol vehicles driving on the beach.
- **§§ 14-9, 14-10, 14-384, 14-453, 14-354:** Ordinance 03-12 established a "special master" to replace the former "hearing examiner" system of code enforcement. The changes in these sections reflect the new terminology.
- **§ 14-10:** Temporary irrigation would be forbidden within 50 feet of a sea turtle nest.
- **§ 14-12:** This section details the new insurance requirement for beach raking; it parallels the current insurance requirements in § 27-56 for personal watercraft rentals and parasailing operators.
- **§ 14-72:** This section now refers to definitions found in § 14-1 rather than using different definitions.

- **§ 14-75:** New language would remove some redundancies and clarify the responsibilities of existing development with regard to lighting that may affect sea turtle nesting habitat.
- **§ 14-76:** Technical requirements for lighting permits are being clarified. The standards provided here are those currently being used in the permitting process.
- **§ 14-78:** The rule against fires on the beach during sea turtle nesting season is being strengthened due to enforcement problems with the previous wording.
- **§ 14-118:** An obsolete reference to “notice of clearing” is being eliminated.
- **§ 14-374:** A reference to Chapter 10 is being corrected.

CHAPTER 27

HISTORY: The original version of Chapter 27 of the Land Development Code was adopted by Fort Myers Beach Ordinance 96-27 shortly after incorporation. At that time it only contained personal watercraft regulations. A separate Chapter 28 was adopted by Ordinance 97-02 containing parasailing regulations (later amended by Ordinance 99-4). The two chapters were combined into Chapter 27 by Ordinance 01-05 in September 2001.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 27:

- **§ 27-45:** This section now refers to definitions found in § 14-1 rather than using different definitions.
- **§ 27-49:** The times in subsections (4) and (9) are being changed to match the time requirements in § 14-5. Subsection (9) is being modified to resolve conflicts on nighttime removal of personal watercraft from the beach; the regulations in § 14-5 would now apply without being repeated here.
- **§ 27-51:** The requirements for nighttime storage of rental kiosks are being clarified to become the same as § 14-5 without being repeated here.

CHAPTER 34

HISTORY: The original version of Chapter 34 of the Land Development Code (the zoning chapter) was also Lee County’s version of that chapter as it existed on the date of incorporation. Interim amendments were made by seven Fort Myers Beach ordinances between 1996 and 2002. Chapter 34 was completely revised by Ordinance 03-03 in March 2003, with minor changes by Ordinance 03-11.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 34:

- **§ 34-2:** The term “duplex” is no longer used in this code. The exact meaning of the “setback” phrases is dependent on the meaning the “lot line” phrases in this section.
- **§ 34-88:** The term “entitlement” is a holdover from the Lee County code. There is no entitlement to a special exception; very specific findings must be made by the Town Council before a special exception may be granted.

- **§ 34-90:** This change resolves an ambiguity as to application requirements.
- **§ 34-121:** The new sentence clarifies an additional duty of the LPA.
- **§ 34-202-203:** These changes match recent changes to Lee County's code.
- **§ 34-214:** An obsolete reference is being eliminated.
- **§ 34-217-220:** These changes match recent changes to Lee County's code.
- **§ 34-265-268:** References were added to these sections.
- **Table 34-3 and § 34-638(d)(2):** The changes to this table and subsection are a result of action by the Town Council on April 21 and May 5, 2003 (see attached minutes and a memorandum from the Town Attorney).
- **§ 34-632:** This change is a result of policy discussions by the LPA and Town Council during the Schultz B&B zoning case.
- **§ 34-638(d)(1):** This change resolves an inconsistency in Chapter 34. A "two-family" home is specifically allowed, with no requirement that the lot must remain in single ownership rather than being split into half-lots; however, the corresponding "0' setback" for the common wall of the building was not explicitly allowed.
- **§ 34-652:** The regulations for the EC (Environmentally Critical) zoning district, would now refer to § 3-366 for details on allowable uses on the beach.
- **§ 34-674:** The requirements for buildings facing the former "Center Street" were ambiguous as to setbacks to this property. This portion of Center Street is now used as a municipal parking lot but is expected to be reopened to through traffic in the near future.
- **§ 34-676:** Buildings facing the Times Square pedestrian plaza have been required to provide dedicated parking spaces if they add a second story; this requirement would be eliminated by the proposed change. (Third stories are not allowed on these buildings under any circumstances.)
- **§ 34-677:** The proposed changes to this section on outdoor display of merchandise are being considered separately through Ordinance 04-08, which is being considered by the Town Council at a final public hearing on June 30 at 9:00 A.M.
- **§ 34-694:** The term "park model" is being replaced by "park trailer" to match the definitions in the floodplain regulations and the terminology in the remainder of this chapter. A grammatical error is also being corrected.
- **§ 34-702:** An ambiguity is being corrected.
- **§ 34-1175:** The satellite dish regulations are being modified to reflect the new smaller satellite dishes and to conform with new FCC rules.
- **§§ 34-1351 and 34-1411:** These changes conform these sections to Table 34-1.
- **§ 34-1441:** A reference to relevant state statutes is being added.
- **§ 34-1443:** Subsection (a) is being corrected to eliminate the term "duplex" which is no longer used in this code.
- **§ 34-1444:** These changes are needed to reflect recent changes in terminology in Lee County's code.
- **§ 34-1552:** Ordinance 03-12 established a "special master" to replace the former "hearing examiner" system of code enforcement. The change in this sections reflects the new terminology.
- **§ 34-1575:** Chapter 34's general regulations on environmentally sensitive areas now contain cross references to Chapters 6 and 10.

- **§ 34-1745:** This change will resolve a potential conflict between mandatory 8-foot-tall buffer screens in § 34-3005 and maximum heights for fences generally.
- **§ 34-1749:** This change resolves an ambiguity about entrance gates. With the new language, it will be clear that an entrance gate can be built to enclose a private parking lot (such as a condominium lot) or a parking lot that is open to the general public (such as La Playa or Seafarer's Plaza). However, entrance gates cannot be built across public or private streets.
- **§ 34-1831-1834:** Lee County adopted new standards for outdoor artificial lighting in 2003. These sections provide similar standards for Fort Myers Beach. Certain height regulations have not been completed because the tall light poles allowed by Lee County may conflict with the sea turtle lighting restrictions in Chapter 14.
- **§ 34-2032:** References to new terminology and to the new lighting standards are being added to this section.
- **§ 34-2020:** An ambiguity in parking standards would be eliminated by this change.
- **§ 34-2394:** The change in this section reflects the new terminology that replaced the former "hearing examiner" system of code enforcement with a "special master."
- **§ 34-3273:** The changes to section are a result of action by the Town Council on April 21 and May 5, 2003 (see attached minutes and a memorandum from the Town Attorney).

Attachments: *Proposed LDC amendments dated June 15, 2004:*

- *Exhibit A – Chapter 1*
- *Exhibit B – Chapter 2*
- *Exhibit C – Chapter 6*
- *Exhibit E – Chapter 14*
- *Exhibit F – Chapter 27*
- *Exhibit H – Chapter 34*

Minutes of Town Council Meetings on April 21 and May 5, 2003 [partial]

Memo from Town Attorney dated May 6, 2003

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1 — GENERAL PROVISIONS

Sec. 1-5. General penalty; continuing violations.

(a) In this section, the phrase “violation of this code” means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the phrase “violation of this code” does not include the failure of a town or county officer or town or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this code shall be punished by a fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment.

(d) In addition to the criminal penalties and enforcement procedures provided in this code, the violation of any provision of this code may be:

- (1) restricted by injunction, including a mandatory injunction;
- (2) **enforced by action of the code enforcement special master, hearing examiner,** in accordance with §§ 2-421–2-429;
- (3) enforced by citation, in accordance with §§ 2-430; and
- (4) otherwise abated in any manner provided by law, including other equitable or civil relief.

Any such suit or action may be instituted and maintained by the town council, by any citizen of

the town, or by any person affected by the violation of this code.

(e) Upon notice from the director, activities contrary to the provisions of this code shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, his agent, or the person doing the work, or shall be posted on the property, and shall state the conditions under which work may be resumed. Where an emergency exists or irreversible damage may be occurring, written notice shall not be required.

(f) Persons who may be charged with a violation of this code include:

- (1) Owners, agents, lessees, tenants, contractors, and any other person using the land or structure where the violation has been committed or currently exists.
- (2) Any person who knowingly commits or assists in such violation.
- (3) Rental agents who fail to take adequate steps to prevent such violations on property they manage.

(g) With respect to violations of this land development code that are continuous with respect to time, each day the violation continues constitutes a separate offense in the absence of provisions to the contrary.

(h) The imposition of a penalty does not prevent revocation or suspension of a license, permit, or franchise; the imposition of civil penalties; equitable relief; or other administrative actions.

(i) Any violation of this code that arose from provisions that are subsequently repealed and reenacted will continue to be a violation of this code and any penalties imposed for those violations will continue to exist unless the subsequent amendment or repeal of the violated provisions clearly intends to make previous violations legal and expressly voids any penalties imposed for those violations.

EXHIBIT B

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 2 — ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. Requests for interpretation of a code provision.

Where a question arises as to the meaning or intent of a section or subsection of this code, a written request for an interpretation may be filed with the director ~~as provided in §§ 34-90 or 34-265, § 34-208.~~

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

Sec. 2-52. Appeals.

Except for challenges to development orders controlled by the provisions of F.S. § 163.3215, any decision made by the director in the course of administering this article may be appealed in accordance with those procedures set forth in ch. 34 for appeals of administrative decisions. ~~In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director or by virtue of its having been ordered by the town council on an appeal reversing the director's denial of the development permit or where the town council has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of~~

~~the development order is alleged to be inconsistent with the Fort Myers Beach Comprehensive Plan. An action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~

ARTICLE IV. IMPACT FEES

Sec. 2-306. Computation of amount.

(a) At the option of the feepayer, the amount of the impact fees may be determined by the schedule set forth in this section.

(b) References in this schedule to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not to usable, interior, rentable, noncommon, or other forms of net square footage.

(c) If a building permit is requested for a building with mixed uses, as defined in § 2-304, then the fees shall be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. However, A shopping center will be considered a principal use; however, when located within a shopping center, a fast-food restaurant or convenience store with gasoline sales will be considered a principal use.

(d) If the type of development activity for which a building permit is applied is not specified on the schedule, the town manager shall use the fee applicable to the most nearly comparable type of land use on the schedule. For transportation impact fees, the town manager shall be guided in the selection of a comparable type by the Institute of Transportation Engineers' *Trip Generation* (latest edition), studies or reports by the federal, state, and

FORT MYERS BEACH IMPACT FEE SCHEDULE

LAND USE TYPE	Impact Fees (rounded to nearest dollar) ¹						Schools ²
	Transportation	Parks		Community	Fire Protection		
Residential:							
Single-family residence	<u>\$2,971</u>	\$2,436	\$461	\$655	<u>\$485</u>	\$560	\$2,232
Multiple-family building (per dwelling unit)	<u>\$2,059</u>	\$1,687	\$341	\$485	<u>\$306</u>	\$269	\$691
Timeshare unit	<u>\$2,237</u>	\$1,834	\$341	\$485	<u>\$306</u>	\$269	\$0
Hotel/motel room	<u>\$2,237</u>	\$1,834	\$230	\$327	<u>\$495</u>	\$308	\$0
Assisted living facility (per dwelling unit) (see § 34-1415 for density equivalents)	<u>\$1,017</u>	\$1,687	\$0	\$0	<u>\$306</u>	\$269	\$0
Commercial (fee per 1,000 sq. ft. except as noted):							
Retail store or shopping center	<u>\$5,063</u>	\$3,992	\$0	\$0	<u>\$621</u>	\$549	\$0
Bank	<u>\$8,038</u>	\$6,063	\$0	\$0	<u>\$621</u>	\$549	\$0
Car wash, self-service (fee per stall)	<u>\$1,683</u>	\$7,749	\$0	\$0	<u>\$621</u>	\$549	\$0
Convenience store with gas pumps	<u>\$11,250</u>	\$8,715	\$0	\$0	<u>\$621</u>	\$549	\$0
Movie theater	<u>\$7,427</u>	\$5,600	\$0	\$0	<u>\$621</u>	\$549	\$0
Restaurant, fast food	<u>\$12,763</u>	\$9,886	\$0	\$0	<u>\$621</u>	\$549	\$0
Restaurant, standard	<u>\$6,504</u>	\$4,905	\$0	\$0	<u>\$621</u>	\$549	\$0
Office (fee per 1,000 square feet):							
General office	<u>\$2,336</u>	\$2,254	\$0	\$0	<u>\$291</u>	\$594	\$0
Medical office	<u>\$7,716</u>	\$6,334	\$0	\$0	<u>\$291</u>	\$594	\$0
Institutional (fee per 1,000 square feet):							
Church	<u>\$1,467</u>	\$1,402	\$0	\$0	<u>\$621</u>	\$549	\$0
Day care center	<u>\$4,107</u>	\$3,900	\$0	\$0	<u>\$621</u>	\$549	\$0
Elementary/secondary school (private)	<u>\$643</u>	\$611	\$0	\$0	<u>\$621</u>	\$549	\$0
Warehouse (fee per 1,000 square feet):	<u>\$1,461</u>	\$1,198	\$0	\$0	<u>\$78</u>	\$123	\$0

¹ In addition to the impact fees listed, an additional 3 percent administrative charge will be levied in accordance with § 2-310(e).

² School impact fees are collected in accordance with Lee County Ordinance No. 01-21, effective December 1, 2001.

county departments of transportation, and articles or reports appearing in the ITE Journal and other reliable sources. If the town manager determines that there is no comparable type of land use on the fee schedule set out in this subsection, then the town manager shall determine the fee by:

- (1) Using traffic generation statistics or other relevant data from the sources named in this subsection; and
- (2) Applying the formula set forth in subsection (g)(3) (f) of this section.

(e) When change of use, redevelopment, or modification of an existing use requires the issuance of a building permit, impact fees shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment, or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.

(f) If an impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or collected by the town, whichever is applicable. If impact fees are owed, no permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until all impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

(g) The person applying for the issuance of a building permit may, at his option, submit evidence to the town manager indicating that the fees set out in the impact fee schedule in this section are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with any applicable administrative code, the town manager may adjust the fee to that appropriate for the particular development.

- (1) The adjustment may include a credit for recreation facilities provided to the development by the feepayer if the recreation facilities serve the same purposes and functions as set forth for regional and/or community parks.
- (2) If a feepayer opts not to have the transportation impact fee determined according to the impact fee schedule in this section, then the feepayer shall prepare and submit to the town manager an independent fee calculation study for the land development activity for which a building permit is sought. The independent fee calculation study shall measure the impact of the development in question on the transportation system by following the prescribed methodologies and formats for such studies established by Lee County’s administrative code. The feepayer must attend a preapplication meeting with town manager or designee to discuss the traffic engineering and economic documentation required to substantiate the request. The traffic engineering or economic documentation submitted must address all aspects of the impact fee formula that the county manager determines to be relevant in defining the project’s impacts at the preapplication meeting and must show the basis upon which the independent fee calculation was made, including but not limited to the following:
 - a. *Traffic engineering studies.* All independent fee calculation studies must address all three of the following:
 1. Documentation of trip generation rates appropriate for the proposed land development activity;
 2. Documentation of trip length appropriate for the proposed land development activity; and
 3. Documentation of trip data appropriate for the proposed land development activity.
 - b. *Revenue credit Cost documentation studies.* The feepayer may also provide documentation substantiating that the costs to accommodate the impacts of the proposed development, or the revenue credits due to the development, differ from the average figures used in developing the fee schedule. This

documentation shall be prepared and presented by qualified professionals in their respective fields and shall follow best professional practices and methodologies.

- (3) The following formula shall be used by the town manager to determine the transportation impact fee per unit of development:

$$\text{Impact Fee} = \text{VMT} \times \text{NET COST/VMT}$$

Where: $\text{VMT} = \text{ADT} \times \% \text{NEW} \times \text{LENGTH} \div 2$

ADT = Trip ends during average weekday

%NEW = Percent of trips that are primary, as opposed to passby or diverted-link trips

LENGTH = Average length of a trip on the approved road system

$\div 2$ = Avoids double-counting trips for origin and destination

ADJUSTMENT = Local adjustment factor, representing the ratio between the VMT predicted by national travel characteristics and observed VMT on the approved road system

$$\text{NET COST/VMT} = \text{COST/VMT} - \text{CREDIT/VMT}$$

$$\text{COST/VMT} = \text{COST/LANE-MILE} \div \text{AVG LANE CAPACITY}$$

COST/LANE-MILE = Average cost to add a new lane to the approved roadway system

AVG LANE CAPACITY = Average daily capacity of a lane at level of service “D”

$$\text{CREDIT/VMT} = \text{\$/GAL} \div \text{MPG} \times 365 \times \text{NPV}$$

\\$/GAL = Capacity-expanding funding for roads per gallon of gasoline consumed

MPG = Miles per gallon, average for U.S. motor vehicle fleet

365 = Days per year (used to convert daily VMT to annual VMT)

NPV = Net present value factor (i.e., 12.46 for 20 years at 5% discount)

Sec. 2-310. Use of funds.

(a) Funds collected from impact fees shall be used only for the purpose of capital improvements for transportation, regional parks, community parks, fire protection, and schools, as defined in § 2-304. Impact fee collections, including any interest earned thereon, ~~less but excluding administrative charges costs retained or collected~~ pursuant to subsection (e) of this section, shall be used exclusively for capital improvements or expansion. These impact fee funds shall be segregated from other funds and shall be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements.

(b) Each fiscal year the town manager shall present to the town council a proposed capital improvement program for transportation, regional parks, and community parks, assigning funds, including any accrued interest, from the appropriate impact fee trust account to specific capital projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in each impact fee trust account until the next fiscal period, except as provided by the refund provisions of this article.

(c) The town shall remit fire protection impact fees to the fire district at least once each quarter, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement.

(d) The town shall remit school impact fees to Lee County at least monthly, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement. Lee County will remit these school impacts to the School Board in accordance with Lee County Ordinance No. 01-21.

(e) The town is entitled to charge and collect three percent of the impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this article. This administrative charge is in addition to the impact fee amounts required by this article. The applicant is responsible for payment of the additional administrative charge in conjunction with the payment of impact fees at the

time a building permit or development order is issued.

**ARTICLE V.
CODE ENFORCEMENT**

Sec. 2-427. Penalties and liens.

(b) *Penalties.*

- (1) A fine imposed under this section cannot exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. However, if the special master finds a violation is irreparable or irreversible in nature, a fine of up to \$5,000 per violation can be imposed. Further, the fine may include the cost of all repairs incurred by the town in accordance with subsection (a) hereof as well as the costs of prosecuting the case before the special master. For purposes of this article, prosecution costs of include, but are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs, and similar items.
- (2) The following factors will be considered by the special master in determining the fine to be imposed:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The special master may mitigate the fine imposed under this section.

EXHIBIT C

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6 — MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS

ARTICLE I. PROPERTY MAINTENANCE CODES

Sec. 6-11. Refuse containers.

(a) 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.

(b) Any refuse containers that are not movable in accordance with subsection (a) shall be opaquely screened from view from streets and adjoining properties. This screening may be achieved by landscaping or by virtue of the location of the container on the site. Screening may also be achieved by walls or opaque fencing provided the wall or fence does not exceed the maximum height permitted for that location (see §§ 34-1171 et seq. and 34-1744). If the nonmovable refuse container would be visible above the allowable height, it must be replaced with a shorter container.

Sec. 6-12. Disposal of swimming pool water.

(a)

Sec. 6-13. Retrofits for rainwater disposal.

(a) .

ARTICLE II. BUILDING CODES

DIVISION 1. GENERALLY

Sec. 6-44. Enforcing officers.

~~Designated officials; such as the building official referenced by the standard codes adopted in this chapter herein, shall be appointed by the town manager. The designated officials shall carry out the duties enumerated in these standard codes and shall be deemed the responsible officials with respect to enforcement of the provisions of these codes.~~

DIVISION 2. LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS

[no changes to this division]

DIVISION 3. BUILDING CODE

Sec. 6-111. Adoption; amendments.

~~The Florida Building Code is following chapters and sections of the 1997 Standard Building Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law, with the exceptions set forth as follows:~~

Chapter 1, Administration.

Sections 103.1 through 103.6 relating to powers and duties of the building official are added as follows:

103.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official has the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures must be in compliance with the intent and purpose of this code, and may not have the effect of waiving requirements specifically provided for in this code.

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

103.2.2 When the building official has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building, structure, or premises may fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

103.3 Stop work orders. Upon notice from the building official, work on any building, structure, electrical, gas, mechanical, or plumbing system that is being done contrary to the provisions of

this code, or in a dangerous or unsafe manner, must immediately cease. Such notice must be in writing and posted on the permit board, stating the reasons for the order. Work may only resume after lifting of the stop work order by the building official.

103.4 Revocation of permits. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any provision of this code.

103.4.1 Misrepresentation of application. The building official may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

103.4.2 Violation of code provisions. The building official may revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical, or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

103.6 Requirements not covered by code. Any requirements necessary for the strength, stability, or proper operation of an existing or proposed building, structure, electrical, gas, mechanical, or plumbing system, or for the public safety, health, and general welfare, not specifically covered by this or the other technical codes, will be determined by the building official.

~~Section 104.1.1 is amended to read as follows:~~

~~104.1.1. When required. [deleted in its entirety]~~
Section 104.1.4 is amended to read as follows: add the following:

104.1.4. Minor repairs. Ordinary minor repairs, routine maintenance, or incidental work of a nonstructural nature may be made without a permit, provided that such repair shall not violate any of the provisions of the technical codes. For purposes of this section, “ordinary minor repairs” include the replacement of damaged or worn materials by similar new materials and any other repairs defined as such by the building official. Ordinary minor repairs under this section may not involve the cutting of any structural beam or supporting member or include any alterations that would increase habitable floor area, change the use of any portion of the building, remove or change any required means of egress or exit access, or affect the structural integrity or fire rating of the building.

Section 104.1.6, relating to time limitations, is amended to add the following:

~~The building official shall take all actions necessary to process an application for a permit with plans as filed, or as amended, without unreasonable or unnecessary delay. All plans reviewed which are approved by the building official or his designee are a best effort in good faith by the town in determining compliance of the plans with all applicable codes, ordinances, rules or regulations. Any failure on the part of the town to ascertain violations of any applicable codes, ordinances, rules or regulations on the approved plans shall not exonerate the contractor, builder and/or owner for their failure to comply with any and all codes, ordinances, rules or regulations.~~

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on

multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

104.1.6.2 ~~The first inspection required by the permit must be successfully completed shall be made within a six-month period of issuance~~ or the permit shall be deemed invalid. All subsequent inspections shall be made within a six-month period of the most recent inspection until completion of work or the permit shall become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

104.1.6.3 The entire foundation must be completed within the first six months from the issuance of the permit. Partial inspections due to complexity of the foundation may be made with building inspector’s approval, and job site plans shall be initialed by the inspector only on that portion of the plans that is inspected, and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the building official on a project for a period not exceeding 90 days each. The request shall be made by written notice to the building official at least 30 days prior to expiration of the building permit. The building official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code, or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be appealed to the town council by the applicant on a form provided by the building official. The council shall grant or deny the extension upon a finding of good cause or lack thereof. If granted, the extension or extensions shall not exceed a period of 90 days each.

~~Section 104.7.2, relating to work commencing before permit issuance, is amended to read as follows: [deleted in its entirety]~~

~~Section 106.1.2, relating to issuing certificate of occupancy, is amended to read as follows: [deleted in its entirety]~~

Section 106.1.4 relating to new or changed land uses is added as follows:

106.1.4 New or changed land use. A certificate of occupancy will only be granted for a new or changed use of land if that use is allowable under ch. 34 of this code.

~~Section 108, relating to the construction board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's construction board of adjustment and appeals found in division 2 of this chapter and article.~~

~~Chapter 2, Definitions.~~

~~The following definitions are added: [deleted in its entirety]~~

~~Chapter 3, Occupancy Classification.~~

~~Chapter 4, Special Occupancy.~~

~~Chapter 5, General Building Limitations.~~

~~Chapter 6, Construction Types.~~

~~Chapter 7, Fire Resistant Materials and Construction.~~

~~Chapter 8, Interior Finishes.~~

~~Chapter 9, Fire Protection Systems.~~

~~Chapter 10, Means of Egress.~~

~~Section 1005.2 is amended to read as follows:~~

~~1005.2. Dead-end pockets or hallways. [deleted in its entirety]~~

~~Chapter 11, Accessibility for People With Physical Disabilities is deleted, and replaced by the 1997 Florida Accessibility Code for Building Construction (see F.S. ch. 553, pt. V, Accessibility By Handicapped Persons).~~

~~Chapter 12, Interior Environment.~~

~~Section 1203, relating to light and ventilation, is amended as follows: [deleted in its entirety]~~

~~Section 1203.6 is amended to add the following:~~

~~1203.6 Heating facilities. [deleted in its entirety]~~

~~Chapter 13, Energy Conservation is deleted, and replaced by the 1997 Florida Energy Efficiency Code for Building Construction (see F.S. ch. 553, pt. VIII, Thermal Efficiency Standards).~~

~~Chapter 14, Exterior Wall Coverings.~~

~~Chapter 15, Roof and Roof Structures.~~

~~The following new subsections are hereby added: [deleted in its entirety]~~

~~Chapter 16, Structural Loads.~~

~~Section 1606, Wind loads: structures must be designed using a fastest-mile wind speed of 110 miles per hour.~~

~~Chapter 17, Structural Tests and Inspections.~~

~~Chapter 18, Foundations and Retaining Walls.~~

~~Chapter 19, Concrete.~~

~~Chapter 20, Light Metal Alloys.~~

~~Chapter 21, Masonry.~~

~~Chapter 22, Steel.~~

~~Chapter 23, Wood.~~

~~Chapter 24, Glass and Glazing.~~

~~Chapter 25, Gypsum Board and Plaster.~~

~~Chapter 26, Plastic.~~

~~Chapter 27, Electrical Systems.~~

~~Chapter 28, Mechanical Systems.~~

~~Chapter 29, Plumbing Systems.~~

~~Chapter 30, Elevators and Conveying Systems.~~

~~Chapter 31, Special Construction.~~

~~Chapter 32, Construction in the Public Right of Way.~~

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers. It shall be unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service shall be provided for each construction site. For purposes of this requirement, a suitable container is any structure, device, receptacle, designated location, or combination thereof which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws before such debris is:

- (1) washed or blown off-site,
- (2) contaminates subsurface elements,
- (3) becomes volatile or malodorous,
- (4) makes an attractive nuisance, or
- (5) otherwise becomes a threat to the public health, safety, and welfare.

Chapter 34, Existing Buildings.

Section 3401.1, relating to scope, is modified to read as follows:

3401.1 Scope. Provisions of this chapter and of division 4 of this article shall govern the application of this code to existing buildings. In interpreting this code, the building official may be guided by the *Nationally Applicable*

Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.

Exception: Buildings and structures located within the High Velocity Hurricane Zone shall comply with the provisions of sections 3401.5, 3401.8, and 3401.2.2.1.

Section 3401.2.2.1, relating to change of occupancy, is deleted, and replaced with a new section 3401.2.2.1, to read as follows:

3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be made to conform to the intent of the technical codes as required by the building official.

Section 3401.5, relating to special historic buildings, is deleted, and replaced with a new section 3401.5, to read as follows:

3401.5 Special historic buildings.

3401.5.1 The provisions of the technical codes relating to the construction, alteration, repair, enlargement, restoration, relocation, or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation, or moving.

3401.5.2 If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards of this code, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

~~Chapter 35, Reference Standards.~~
~~Appendix A, Weights of Building Materials.~~

~~Appendix B, Recommended Schedule of Permit Fees, is deleted in its entirety and replaced with user fees and charges as referenced in Lee County Administrative Code 3-10, Appendix C (external fees and charges manual):~~

~~Appendix C, One and Two Family Dwellings is deleted in its entirety.~~

~~Appendix D, Standards for Demolition.~~

~~Appendix E, Energy Conservation is deleted, and replaced by the 1997 Florida Energy Efficiency Code for Building Construction (see F.S. ch. 553, pt. VIII, Thermal Efficiency Standards):~~

~~Appendix F, Fire District.~~

~~Appendix G, Adobe Construction.~~

~~Appendix H, Manufactured Homes Tie Down Standards.~~

Sec. 6-112. Wind-borne debris region and basic wind speed map.

The entire incorporated area of the Town of Fort Myers Beach lies within the wind-borne debris region and the 130 mph basic wind speed zone as established by section 1606.1.6 and figure 1606 of the Florida Building Code.

Sec. 6-113. Compliance with outdoor lighting standards.

All building permits must comply with the outdoor lighting standards in § 34-1831-1860 of this code.

Sec. 6-114. Compliance with NPDES erosion control standards.

Stormwater runoff from construction sites must be managed in compliance with §§ 10-606-607 of this land development code.

Secs. 6-115 ~~112~~-6-120. Reserved.

**DIVISION 4.
EXISTING BUILDINGS CODE**

Sec. 6-121. Purpose.

The purpose of this code is to encourage the continued use or reuse of existing buildings. This code is designed to supplement the other codes adopted in this article. In interpreting this code, the

building official may be guided by the *Nationally Applicable Recommended Rehabilitation Provisions*, published in 1997 by the U.S. Department of Housing and Urban Development.

Sec. 6-122. Adoption; amendments.

The following chapters and sections of the 1997 Standard Existing Buildings Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:

Chapter 1, Administration.

Section 101.7.1, relating to a change of occupancy, is deleted, and replaced with a new section 101.7.1 to read as follows:

If the occupancy classification or any occupancy subclassifications of any existing building is changed to a more hazardous occupancy, the building shall be made to conform to the intent of the **Florida Standard Building Code** for new construction as required by the building official.

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County’s construction board of adjustment and appeals found in division 2 of this chapter and article.

Chapter 2, Definitions and Abbreviations.

Chapter 3, Historic Structures, is hereby amended to read as follows:

The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation, or moving.

If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards, the building official may require the building to

be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

Chapter 4, Means of Egress.

Chapter 5, Fire Protection.

Chapter 6, Light, Ventilation and Sanitation.

Chapter 7, Building Services.

Chapter 8, Maintenance.

Appendix A, Rehabilitation Guidelines.

Secs. 6-123--6-230 130. Reserved.

DIVISION 5. PLUMBING CODE

[deleted in its entirety]

DIVISION 6. MECHANICAL CODE

[deleted in its entirety]

DIVISION 7. GAS CODE

[deleted in its entirety]

DIVISION 8. ELECTRICAL CODE

[deleted in its entirety]

DIVISION 9. FIRE CODES

[deleted in its entirety]

DIVISION 5. 10. CONTRACTOR LICENSING

[no further changes to this division]

ARTICLE III. COASTAL CONSTRUCTION CODE

DIVISION 1. GENERALLY

Sec. 6-331. Origin.

The Florida legislature adopted a Coastal Zone Protection Act in 1985 (F.S. § 161.52 et seq.), as later amended by Laws of Florida 2000-141, with requirements for enforcement by local governments. This article contains relevant ~~the~~ requirements of that act plus other local regulations, which will reduce the harmful consequences of natural disasters on sensitive coastal areas including the entire Town of Fort Myers Beach.

Sec. 6-332. Intent of article; applicability of article.

The purpose of this article is to provide minimum standards for the design and construction of buildings and structures to reduce the harmful effects of hurricanes and other natural disasters throughout the town. These standards are intended to specifically address design features which affect the structural stability of the beach, dunes and topography of adjacent properties. In the event of a conflict between this article section and other portions sections of this code, article, the requirements resulting in the more restrictive design will apply. No provisions in this article will be construed to permit any construction in any area where prohibited by state or federal regulation.

(a) **Applicability generally.** The requirements of this article will apply to the following types of construction:

- (1) New construction as defined herein;
- (2) Substantial improvements to existing structures as defined in § 6-405 of this code; and
- (3) Any construction which would change or alter the character of the shoreline, e.g., excavation, grading, or paving. This article does not apply to minor work in the nature of normal beach cleaning or debris removal, which is regulated by article I of ch. 14.

(b) **Construction seaward of mean high water.** Structures or construction extending seaward of the mean high-water line which are regulated by F.S. § 161.041, e.g. groins, jetties, moles, breakwaters, ~~seawalls, revetments,~~ beach nourishment, inlet dredging, etc., are specifically exempt from the provisions of this article. In addition, this article does not apply to those portions of piers, pipelines, or outfalls which are located seaward of the mean high-water line and are regulated pursuant to the provisions of F.S. § 161.053.

(c) **Certification of compliance.** All plans for buildings must be signed and sealed by an architect or engineer registered in the state. Upon completion of the building and prior to the issuance of a certificate of occupancy, a statement must be filed with the director signed and sealed by an architect or engineer registered in the state in substantially the following form: “To the best of my knowledge and belief the above-described construction of all structural loadbearing components complies with the permitted documents and plans submitted to the Town of Fort Myers Beach.”

Sec. 6-333. Definitions.¹

(a) The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: Words or phrases not defined will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

~~**Beach or shore** means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.~~

Beach or shore has the same meaning given the word “beach” in § 14-1.

...

¹*Cross reference(s)--Definitions and rules of construction generally, § 1-2.*

~~**Dune** means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach, and deposited by any natural or artificial means:~~

~~**Dune** has the same meaning given it in § 14-1.~~

~~**Major structure** includes, but is not limited to, residential, commercial, institutional, or other public buildings and other construction having the potential for substantial impact on coastal zones (also see definitions of *minor structures* and *nonhabitable major structure* below).~~

...

~~**Minor structure** includes, but is not limited to, pile-supported elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be characteristic of minor structures that they are those structures considered expendable under design wind, wave, and storm forces.~~

~~**Mobile home or manufactured home** means housing which conforms to the Federal Manufactured Housing Construction and Safety Standards pursuant to F.S. § 320.823. However, a mobile home or manufactured home is not a manufactured building as defined in F.S. ch. 553, pt. IV.~~

~~**National Geodetic Vertical Datum (NGVD)**, as corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.~~

~~**Nonhabitable major structure** includes, but is not limited to, swimming pools; parking garages; pipelines; and public piers; canals, lakes, ditches, drainage structures, and other water-retention structures; water and sewage treatment plants; electrical power plants, transmission and distribution lines, transformer pads, vaults and substations, roads, bridges, streets and highways;~~

~~underground or aboveground storage tanks; communications buildings and towers; and flagpoles and signs over 15 feet in height.~~

...

~~(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.~~

~~Sec. 6-334. Conflicting provisions.~~

~~Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the most restrictive requirements shall apply.~~

~~Secs. 6-335--6-337. Reserved.~~

~~Sec. 6-3348. Variances.~~

~~(a) Requests for variances from the provisions of this article shall be processed and decided in the same manner as for variances under ch. 34 of this code.~~

~~Secs. 6-3359--6-360. Reserved.~~

**DIVISION 2.
COASTAL CONSTRUCTION STANDARDS**

~~Sec. 6-361. Generally.~~

~~The following minimum standards will apply to all construction in the Town of Fort Myers Beach.~~

~~Sec. 6-362. **Reserved.** Structural requirements for major structures:~~

~~(a) *Design and construction generally.* Major structures must conform to the minimum building code standards adopted in § 6-111.~~

~~(b) *Mobile homes and manufactured homes.* Mobile homes and manufactured homes must conform to the Federal Mobile Home Construction and Safety Standards pursuant to F.S. § 320.823, as~~

~~well as the requirements of subsection (c) of this section.~~

~~(c) *Elevation, floodproofing and siting.* Structures must be designed, constructed and located in compliance with the floodplain regulations found in article IV of this chapter.~~

~~(d) *Velocity pressure.* Major structures, except mobile homes and manufactured homes, must, at a minimum be designated and constructed in accordance with chapter 16, section 1606 of the 1997 Standard Building Code using a fastest-mile wind speed of 110 miles per hour.~~

~~(e) *Foundation design.* Foundation design and construction of a major structure must consider all anticipated loads resulting from a 100-year storm event, including wave, hydrostatic, and hydrodynamic loads acting simultaneously with live and dead loads. Erosion computations for foundation design must account for all vertical and lateral erosion and scour-producing forces, including localized scour due to the presence of structural components. Foundation design and construction must provide for adequate bearing capacity taking into consideration the anticipated loss of soil above the design grade as a result of localized scour. The erosion computations required by this section do not apply landward of the 1991 coastal construction control line.~~

Sec. 6-363. Reserved.

Sec. 6-364. Structural Special requirements near beaches. ~~for nonhabitable major structures.~~

~~(a) *Major structures.* Nonhabitable major structures must satisfy the structural requirements of § 6-362(c) and the applicable provisions of the Standard Building Code as required by article II of this chapter. However, these structures are not required to meet the balance of specific structural requirements set out in § 6-362. Such structures must be designed to produce the minimum adverse impact on the beach and dune system.~~

- ~~(1) Locational criteria for major structures are found in § 6-366(b).~~
- ~~(2) Structural and permitting criteria for major structures are found in ch. 31 of the Florida Building Code and in ch. 62B of the Florida Administrative Code.~~

- ~~(3) All sewage treatment and public water supply systems must be floodproofed to prevent infiltration of surface water anticipated from a 100-year storm event.~~
- ~~(4) Underground utilities, excluding pad transformers and vaults, must be floodproofed to prevent infiltration of surface water expected from a 100-year storm event, or must otherwise be designed to function when submerged under such storm conditions.~~

~~Sec. 6-365. Structural requirements for minor structures.~~

~~(b) *Minor structures.* Minor structures must satisfy the structural requirements of § 6-362(c) and the applicable provisions of the Standard Building Code as required by article II of this chapter. However, these structures are not required to meet the balance of the specific structural requirements set out in § 6-362. Such structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce the potential for water and wind blown material.~~

- ~~(1) Locational criteria for minor structures are found in § 6-366(b).~~
- ~~(2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 for detailed regulations.~~

Sec. 6-365. Reserved.

Sec. 6-366. Location of construction near beaches.

~~(a) Except for beach renourishment and for minor structures such as elevated walkways, lifeguard support stands, piers, and beach access ramps, and gazebos, and coastal or shore protection structures, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. ~~(b) In addition to complying with all other provisions of this code, At a minimum, Major structures must shall be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line which is depicted on the Future Land Use Map as the seaward edge of~~~~

land-use categories allowing urban development and as the landward edge of the Recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process.

- (1) Other provisions of this code provide for certain other minor structures in the EC zoning district:
 - a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b).
 - b. Some temporary structures such as tents may be permitted through a temporary use permit for special events held on the beach, in accordance with § 14-11.
 - c. Under certain circumstances, licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, ch. 27, and § 34-3151 of this code.
- (2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and all other paved areas. See §§ 34-88, 34-932(b), and 34-652 for details.
- (3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 for details.

(c) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal

construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(d) New and expanded beachfront development must construct state-approved dune walk-over structures at appropriate crossing points (see § 10-415(b)).

(e) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b).

Sec. 6-367. Public access.

Development or construction activity may not interfere with accessways established by the public through private lands to lands seaward of mean high tide line or mean high-water line by prescription, prescriptive easement or any other legal means, unless the developer provides a comparable alternative accessway. The developer has the right to improve, consolidate or relocate such public accessways if the accessways provided are:

- (1) Of substantially similar quality and convenience to the public;
- (2) Approved by the town council;
- (3) Consistent with the Fort Myers Beach Comprehensive Plan; and
- (4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 coastal construction control line.

Sec. 6-368. References.

Assistance in determining the design parameters and methodologies necessary to comply with the requirements of this article may be obtained from:

- (1) Shore Protection Manual, U.S. Army Corps of Engineers, fourth edition, 1984.
- (2) U.S. Department of the Army, Coastal Engineering Research Center's Technical Papers and Reports.
- (3) State department of environmental protection, division of beaches and shores, technical and design memoranda.

~~(4) Naval Facilities Engineering Command
Design Manual, NAVFACDM-26, U.S.
Department of the Navy.~~

Secs. 6-3689--6-400. Reserved.

EXHIBIT E

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 — ENVIRONMENT AND NATURAL RESOURCES

ARTICLE I. BEACH AND DUNE MANAGEMENT ²

Sec. 14-1. Definitions.

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word “shall” is always mandatory.

~~*Beach* has the same meaning given it in § 14-72.~~

~~*Beach* means that area of sand along the Gulf of Mexico that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, usually the effective limit of storm waves. Beaches include dunes and dune vegetation.~~

...

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

² *Cross reference(s)*—Sea turtle conservation, article II of ch.14; personal watercraft and parasailing, ch. 27; water-oriented activities, div. 41 of ch. 34.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, ~~green buttonwood, cabbage palm, cocoplum, and seagrape, and southern wax myrtle.~~

~~*Mechanical beach raking* means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.~~

~~*Seaward line of vegetation* means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.~~

...

Sec. 14-5. Beach furniture and equipment.

~~(a) From May 1 through October 31, All beach furniture and equipment must be removed from the beach as follows: (1) All beach furniture and equipment must be removed from the beach EC zoning district (seaward of the 1978 coastal construction control line) between the hours of 9:00 P.M. until 7:00 8:00 A.M.~~

~~(2) The beach furniture and equipment must be moved daily either behind the permanent~~

~~dune line; or where no dune line is present; and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall.~~

- (1) ~~Where compliance with the foregoing provisions would cause an undue hardship due to a physical barrier such as a tall seawall, the town manager may, after determining the minimum variance from the requirements of this ordinance to reflect the physical barrier, designate the storage location. (3) Beach furniture and equipment that is removed from allowed to remain on the beach pursuant to a variance must be the maximum distance from the water, at least 10 feet from a sea turtle nest and from a dune or dune vegetation, and as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. Stacking is not required for personal watercraft; all wooden cabanas must be stacked after May 1, 2006.~~
- (2) ~~For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.~~

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and ~~7:00~~ 8:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

~~(d) All beach furniture and equipment (such as chairs, umbrellas, and cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation. A business that rents chairs, umbrellas, cabanas, or similar equipment may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium,~~

booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours. Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of [insert date of adoption] may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

- (1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
- (2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
- (3) The vehicle, trailer, and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1. Beach furniture and equipment may be placed on a vehicle or on a wheeled trailer but may not be dragged or pushed by a vehicle.

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. The only exceptions require town approval and the appropriate DEP permit based on is necessary for determinations that health or safety issues have been confirmed that would allow:

- (1) A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.
- (2) If health or safety issues are present such as a large fish kill or a red tide event, the wrack line may be raked up to 10 feet landward of the normal high tide line.
- (3) If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking requires the appropriate DEP permit and a permit from the town in accordance with the following requirements:

- (1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners, the dimensions of the area to be raked, and the location of existing vegetation and structures. Proof of insurance in accordance with § 14-12 must also be submitted with the application.
- (2) Prior to the granting or denying of the application, the director will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.
- (3) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.
- (4) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:
 - a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine

- turtle permit holder, whichever occurs first (see requirements in § 14-78(b)).
- b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid F.A.C. Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Protected Species Management, at (561) 575-5407.
- c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
- d. Mechanical beach raking equipment shall meet the following standards:
 1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:
 - a- $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{divided by the footprint in square inches}}$
 - b- EXAMPLE: $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \text{ divided by } 198 \text{ square inches (ATV with 6" x 8.25" footprint x 4 tires)} = 3.1 \text{ PSI}$
 2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a

maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. ~~A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.~~

3. The beach raking vehicle and equipment must be removed from the beach when not in use.
 4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.
 5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
 6. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.
 7. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.
- e. A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Sec. 14-7. Vehicular traffic on the beach.

It is unlawful and prohibited to operate any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or on sea turtle nesting habitat as defined in § 14-72, except for the following:

- (1) **Research or patrol vehicles**, only for authorized permittees of the FWC, DEP officials, law or code enforcement officers, EMS and firefighters, scientific monitoring, and town-approved service vehicles. These vehicles must travel below the previous night's mean high tide line and avoid riding on vegetation. Vehicular travel in the Critical Wildlife Area at Mulholland Point (Little Estero Island) should be severely limited to avoid disturbing wildlife and vegetation.
- (2) **Mechanical beach raking**. Vehicles operating under permits issued pursuant to § 14-6(c).
- (3) **Beach furniture and equipment transport**. Vehicles operating under permits issued pursuant to § 14-5(e).
- (4) **Jet-ski transport and storage**. Jet-ski transport and storage, when in accordance with § 27-49(1) and (9) even for jet-skis that are not available for rental in accordance with ch. 27.
- (5) **Wheelchairs**. A wheelchair, or other conveyance with prior approval from the town, for a person with a disability, which is actually being used by the person with a disability). Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.
- (6) **Maximum tire pressure**. Any vehicle authorized to drive on the beach cannot exceed a ground-to-tire pressure of 10 PSI as computed in accordance with § 14-4(c)(4)d.1, except for wheelchairs permitted in accordance with subsection (4) above.
- (7) **Sea turtle nesting season**. See § 14-78(b) for additional restrictions during the sea turtle nesting season.

Sec. 14-9. Enforcement.

(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 article.

(b) When imposing a sentence or penalty, the court, special master, hearing examiner, or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special master.

~~hearing examiner~~, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

Sec. 14-10. Restoration standards for dune vegetation alteration violations.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or ~~special master, hearing examiner~~, a restoration plan shall be ordered using the standards in this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or ~~special master, hearing examiner~~.

(b) The restoration plan shall include the following minimum standards:

- (1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock shall be one and two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If the density or species of the vegetation cannot be determined where the violation occurred, then an assumption shall be made that the density and the species were the same as on similar properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total size shall equal or exceed that specified in the above standards.
- (2) Dune vegetation alteration violations due to raking, excavation, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
- (3) Replacement plantings shall have a guaranteed minimum of 80 percent survivability for a period of no less than five

years; however, success will be evaluated on an annual basis.

- (4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting. Temporary irrigation must be turned off within 50 feet of a sea turtle nest.
- (5) The plan shall specify that within 90 days of completion of the restoration, a written report shall be submitted to the town. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.
- (6) The restoration plan shall include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:
 - a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.
 - b. Replacement of dead vegetation that was planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation shall be nursery grown and of the same species and at least the same size as those originally planted.
 - c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive exotic vegetation control measures taken, and any other factors which would indicate the functional health of the restored area.
 - d. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner shall constitute a violation of this ordinance.
 - e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director shall periodically inspect the restoration.

Sec. 14-12. Insurance.

(a) No person shall operate mechanical beach raking equipment unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation or use of beach raking equipment. At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and shall be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured beach raking equipment.

Secs. 14-13 ~~12~~--14-70. Reserved.

**ARTICLE II.
SEA TURTLE CONSERVATION**

Sec. 14-72. Definitions.

When used in this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

~~**Beach** means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.~~

~~**Beach** has the same meaning given it in § 14-1.~~

...

~~**Dune** means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach and deposited by any natural or artificial mechanism.~~

~~**Dune** has the same meaning given it in § 14-1.~~

...

~~**Mechanical beach raking** means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing ambient grade and results in no removal of in situ sand.~~

~~**Mechanical beach raking** has the same meaning given it in § 14-1.~~

...

Sec. 14-75. Existing development.

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by artificial lighting originating from the existing development during the nesting season. ~~Artificial lighting from existing development must not directly or indirectly illuminate sea turtle nesting habitat during the nesting season.~~ Existing development must incorporate and follow the measures outlined in § 14-79 to reduce or eliminate interior light emanating from doors and windows visible from the beach, a dune, or other sea turtle nesting habitat.

Sec. 14-76. New development.

New development must comply with the following requirements:

(a) Artificial lighting must conform to the general requirements of § 14-75.

(b) A lighting plan must be submitted for review prior to the earlier of building permit or development order issuance for all new development, as follows:

(1) For new development seaward of the 1991 coastal construction control line, as defined in § 6-333 (CCCL), a copy of a DEP-approved lighting plan is required.

(2) For new development whether seaward or landward of the CCCL, a lighting plan is required for all commercial and industrial development, and for all multi-story developments in multi-family zoning districts.

(3) The location, number, wattage, elevation, orientation, fixture cut sheets, and all types of

- all proposed exterior artificial light sources, including landscape lighting, must be included on the lighting plan. An approved lighting plan is required before a building permit will be issued and final inspections for a certificate of occupancy or certificate of compliance will be performed by the town.
- (4) Tinted glass, or any window film applied to window glass which meets the definition for tinted glass in § 14-72, must be installed on all windows and glass doors visible from the beach and must be so indicated on the building permit plans.
 - (5) Exterior light fixtures visible from the beach must meet all of the following criteria to be considered appropriately designed:
 - a. Completely shielded downlight-only fixtures or recessed fixtures having 25-watt yellow bug type bulbs and non-reflective interior surfaces are used. Other fixtures that have appropriate shields, louvers, or cutoff features may also be used, if they comply with § 14-75.
 - b. All fixtures are mounted as low as possible through the use of low-mounted wall fixtures, low bollards, and ground level fixtures.
 - c. All exterior lighting must be installed in such a manner and be so shielded that the cone of light will fall substantially within the perimeter of the property. Through the use of shielding and limitations on intensity, artificial light traveling outward and upward producing a sky glow must be reduced to the greatest extent possible without unduly interfering with the purpose of the exterior lighting.
 - d. If ceiling fans are placed on balconies or porches that are visible from the beach, no lighting may be installed on the fans.
 - e. Artificial lighting, including but not limited to uplighting, is not permitted in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see § 34-652).
 - (6) Parking lot lighting must use:
 - i. Poles no higher than twelve feet in height;
 - b. Shoebox-style fixtures containing high pressure sodium or low pressure sodium bulbs 150 watts or less; and
 - c. Opaque shields with a non-reflective black finish on the inside that completely surround each fixture and extend below each fixture at least 12 inches.
 - (7) Low profile artificial lighting is encouraged, such as step lighting or bollards with louvers and shields that are no taller than 48 inches with bulbs of 35 watts or less. Opaque shields must surround 180 degrees of each fixture to keep direct light off the beach.
 - (c) Prior to the issuance of a certificate of occupancy (CO), the exterior lighting of new development must be inspected after dark by the town, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this article.

Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.

(a) ~~Fires that directly or indirectly illuminate sea turtle nesting habitat are prohibited on the beach during the sea turtle nesting season.~~

(b) *Driving on the beach.* [no further changes to this section]

ARTICLE III. SOUTHERN BALD EAGLE ³

Sec. 14-118. Notification procedure.

The town will notify the FWC and the U.S. Fish and Wildlife Service upon receipt of any application for a planned development rezoning, a development order, ~~a notice of clearing~~, or a building permit for any property located within 750 feet of a bald eagle nest. The notice must include any available information gathered by the eagle technical advisory committee regarding the behavior of the eagles who are occupying the nest.

**ARTICLE V.
TREE PROTECTION ⁴**

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

...

Indigenous vegetation means those plants which are characteristic of the major plant communities, as listed in § ~~10-413~~ ~~10-701~~.

...

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-384. Restoration standards.

(a) If a violation of this article has occurred and upon agreement of the director and the violator, or, if they cannot agree, then upon conviction by the court or order of the ~~special master, hearing examiner~~, a restoration plan shall be ordered in accordance with the following standards:

- (1) The restoration plan shall include the following minimum planting standards: *[no changes to subsection (1)]*
- (2) Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court or the ~~special master, hearing examiner~~, as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida No. 1 or better grade. Replacement stock shall have a guaranteed 80 percent survivability for a

period of no less than five years. A maintenance provision of no less than five years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings. The director may at his/her discretion allow the replacement stock to be planted off-site where approved development displaces areas to be restored. In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the director.

- (3) *[no further changes to this section]*

**ARTICLE VI.
MANGROVE ENFORCEMENT ⁵**

Sec. 14-453. Enforcement.

(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 article.

(b) When imposing a sentence or penalty, the court, ~~special master, hearing examiner~~, or any other appropriate body may, in mitigation, consider the successful replacement of mangroves illegally removed, and the restoration of the subject area when deemed by the court, the ~~special master, hearing examiner~~, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the mangrove system to recover or perform those functions for which it is being protected.

(c) In any enforcement action under this article, each mangrove, so altered, will constitute a separate violation.

Sec. 14-454. Restoration standards.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon conviction by the court or order of the ~~special master, hearing examiner~~, a restoration plan shall be ordered pursuant to the standards contained in

subsection (b) of this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or ~~special master.~~
~~hearing examiner.~~

(b) The restoration plan shall include the following minimum planting standards: *[no further changes to this section]*

EXHIBIT F
FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 27 — PERSONAL WATERCRAFT AND PARASAILING

**ARTICLE I. DEFINITIONS
AND ENFORCEMENT**

Sec. 27-45. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

***Beach** means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.*

***Beach** has the same meaning given it in § 14-1.*

...

***Dune** has the same meaning given it in § 14-1.*

***Dune vegetation** has the same meaning given it in § 14-1.*

...

***FWCE** means the Florida Fish & Wildlife Conservation Commission or its successor.*

...

***Cross reference(s)**—Definitions and rules of construction generally, § 1-2.*

**ARTICLE II.
PERSONAL WATERCRAFT**

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a Lee County occupational license which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and,
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license is issued until

- the personal watercraft travels beyond the 500 feet offshore slow speed limit.
- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
 - (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.
 - (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. any state permits that may be required for this activity have been issued;
 - b. such movement begins only after ~~9:00~~ **8:00** A.M., or after completion of daily monitoring for turtle nesting activity by a **FWCE-authorized** marine turtle permit holder, whichever occurs first; and
 - c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).
 - (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
 - (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
 - (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
 - (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.
 - (9) Personal watercraft may be moored in the water during the operating hours of the business, but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach. ~~Between the hours of 9:00 P.M. and 7:00~~ **8:00** A.M. from May 1 until October 31, all personal watercraft and associated equipment must be removed from the beach in accordance with § 14-5. and placed behind the dune line.
 - a. ~~If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.~~
 - b. ~~If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.~~
 - c. ~~Where compliance with the foregoing provisions would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.~~
 - (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
 - (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.
 - (12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
 - (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the

personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:

- a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet.
- (15) Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34.
- (16) *Safe handling instructions.*
- a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58.
 - b. If the FWCE adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
- (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.

- (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
- (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

ARTICLE IV. ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business and shall not:

- (1) be located within 500 feet of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or
- (2) be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.

(b) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.

(c) Businesses holding a valid PWVL or PAL must meet the following requirements:

- (1) ***Other boating regulations.*** All businesses and their vessels are required to comply with the town’s Vessel Control and Water Safety

- Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.
- (2) **Insurance.** A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.
 - (3) **Structures on the beach.** During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.
 - a. This structure may be a table, podium, booth, or storage box.
 - b. The total horizontal dimension of this structure may not exceed a horizontal dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
 - c. This structure must be portable and must be kept at least 10 feet from a sea turtle nest and from a dune or dune vegetation at all times. The structure must and never be left on the beach before or after regular business hours and must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. in accordance with § 14-5.
 - (4) **Signs on the beach.** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.
 - a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.
 - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.
 - (5) **Signs off the beach.** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:
 - a. must be placed indoors after business hours;
 - b. must not be illuminated; and
 - c. must not be placed on the beach at any time.
 - (6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.

EXHIBIT H

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

Duplex. See *Dwelling unit, types.*

Setback means the minimum horizontal distance required between a specified line and the nearest point of a building or structure. See also “build-to” lines in § 34-662 and setback exceptions in § 34-638(d).

- (1) *Street setback* means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of “Lot line, front” and § 34-638.
- (2) *Side setback* means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. There are two types of side setbacks, those applying to waterfront lots and those applying to non-waterfront lots. See definition of “Lot line, side” and § 34-638.
- (3) *Rear setback* means the setback, extending across the rear of a lot, measured from the rear lot line. See definition of “Lot line, rear” and § 34-638.
- (4) *Water body setback* means the setback measured from the mean high water line (MHWL), or the control elevation line if applicable, of a water body. See § 34-638.

ARTICLE II. ZONING PROCEDURES

DIVISION 2. TOWN COUNCIL

Sec. 34-88. Special exceptions.

- (1) *Function.* The town council shall hear and decide all applications for special exceptions permitted by the district use regulations.
- (2) *Considerations.* In reaching its decision, the town council shall consider the following, whenever applicable:
 - a. Whether there exist changed or changing conditions which make approval of the request appropriate.
 - b. The testimony of any applicant.
 - c. The recommendation of staff and of the local planning agency.
 - d. The testimony of the public.
 - e. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
 - f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
 - g. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
 - h. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
 - i. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

- (3) **Findings.** Before granting any special exceptions, the town council must ~~shall~~ find that the applicant has proved entitlement to the special exception by demonstrating compliance demonstrated that the requested special exception complies with the standards in this section and with:
 - a. The Fort Myers Beach Comprehensive Plan;
 - b. This chapter; and
 - c. Any other applicable town ordinances or codes.
- (4) **Authority.**
 - a. The town council shall grant the special exception unless it finds that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience and welfare of the citizens of the town, or that the request is in conflict with the criteria in this section.
 - b. In reaching its decision, the town council has the authority to attach conditions and requirements necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such conditions or requirements shall be reasonably related to the special exception requested.

Sec. 34-90. Land development code interpretations.

The town council may hear and decide applications for interpretations of this code as provided in § 34-265. Such applications shall not require a public hearing or recommendation from the local planning agency. Applications for such interpretations must be accompanied by the submittals described in § 34-202(a)(4)–(9).

DIVISION 3. LOCAL PLANNING AGENCY

Sec. 34-121. Functions, powers, and duties as to zoning matters.

The functions, powers, and duties of the local planning agency as to zoning matters shall be to:

- (1) Prepare recommendations for changes to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council.
- (2) Make recommendations on the following to the town council:
 - a. Applications for rezonings including planned developments.
 - b. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.
 - c. Special exceptions.
 - d. Variances from this code and any town ordinance which specifies that variances from such ordinance can only be granted by the town council.
 - e. Extensions of master concept plans for planned developments (see § 34-220(4)).
 - f. Any other applications that require action by the local planning agency pursuant to this code.
- (3) **Authority.**
 - a. The local planning agency shall serve in an advisory capacity to the town council with respect to zoning matters as set forth in subsections (1) and (2) of this section, and in such capacity may not make final determinations.
 - b. The local planning agency shall not recommend the approval of a rezoning, and the town council shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b), unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Plan.
 - c. In reaching its recommendations, the local planning agency shall have the authority to recommend conditions and requirements to be attached to any request for a planned development, special exception, or variance.

**DIVISION 4.
APPLICATIONS AND PROCEDURES**

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) *All applications.* [this subsection unchanged]

(b) *Additional submittal requirements for owner-initiated applications.* In addition to the submittal requirements set forth in subsection (a), every application initiated by a property owner involving a change in the zoning district boundaries, or a request for special exception, appeal from administrative action, or variance, for his own property, shall include the following:

(1) **Evidence of authority.**

a. *Ownership interests.* The names of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries (see § 34-201(b)(2)a. through c.).

b. *Applicant's statement.* Notwithstanding the requirements of § 34-201(a)(1)a., the applicant for any action requiring a public hearing must sign a statement, under oath, that he is the owner or the authorized representative of the owner(s) of the property and that he has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the town in accordance with this code. This must also include a statement that the property owner will not transfer, convey, sell, or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.

c. ~~*Agent authorization.* If the owner authorizes an agent to represent the owner in all matters pertaining to the application, the owner must provide the agent with a notarized statement evidencing the agent's authority to act on the owner's behalf and encumber the property with conditions applicable to the approval requested in the application. An agent~~ The applicant may authorize additional agents to assist in the

preparation and presentation of the application. The town will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions. However, an agent cannot transfer authority to bind the property with respect to conditions. This later authority will only be recognized by the town when it is provided directly to the agent by the owner.

~~c. *Contract purchaser/vendee authorization.* If a contract purchaser or vendee is the applicant, a notarized statement from the property owner must be submitted authorizing the contract purchaser/vendee to act as an agent of the property owner for purposes of application submittal and agreement to conditions applicable to approval of the request.~~

(2) [this subsection unchanged]

(3) [this subsection unchanged]

(4) [this subsection unchanged]

(5) [this subsection unchanged]

Sec. 34-203. Additional requirements for certain applications requiring public hearing.

(a) [this subsection unchanged]

(b) [this subsection unchanged]

(c) [this subsection unchanged]

(d) [this subsection unchanged]

(e) [this subsection unchanged]

(f) [this subsection unchanged]

(g) [this subsection unchanged]

(h) **Modifications to submittal requirements.** Upon written request, on a form prepared by the director, the director may modify the submittal requirements contained in this section or in other portions of this code where modifications are specifically authorized, where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the director is discretionary and may not be appealed.

Sec. 34-214. Application for an amendment.

Applications for amendments to an approved master concept plan or its attendant documentation,

or for the reaffirmation of a previously vacated master concept plan (~~for plans approved prior to December 2, 1991~~), will require only as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses, if any, that have occurred since the original application was made. Some amendments can be approved administratively as provided in § 34-219; the remainder shall proceed through the public hearing process described in § 34-216.

Sec. 34-217. Effect of planned development zoning.

(a) *Compliance with applicable regulations.*
[this subsection unchanged]

(b) *Applicability of development regulations.*
[this subsection unchanged]

(c) The terms and conditions of the planned development zoning approval (other than the master concept plan as set forth in § 34-220) run with the land and remain effective in perpetuity or until a new zoning action is approved by the town council. All developments must remain in compliance with the terms and conditions of the zoning approval.

~~(c) The obligation to enforce the conditions attached to the master concept plan remains with the original applicant until all of the subject property is developed and certified for use and occupancy, or until a subsequent owner assumes that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or conveyance of a lot, development parcel, or outparcel, will relieve the original applicant only as to that phase, lot, development parcel, or outparcel, and then only when notice is filed in accordance with § 34-215. The obligation to enforce the conditions attached to a reaffirmed master concept plan will lie with whomever files the unified control documentation for that reaffirmation.~~

(d) [this subsection unchanged]

Sec. 34-220. Duration of rights conferred by adopted master concept plan.

Master concept plans are subject to the following:

- (1) An approved master concept plan and its attendant documentation shall be deemed to be vacated unless the property owner obtains a development order for the first phase of the project within three years of the date of the original approval by the town council, consisting of no less than 20 percent of the lots, dwelling units, square footage, or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the town council.
- (2) [this subsection unchanged]
- (3) [this subsection unchanged]
- (4) When any portion of a master concept plan is vacated pursuant to subsection (1), the vacated area will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved or the original master concept plan is reaffirmed, or until the property is rezoned by the town council.
- (5) ~~(4)~~ Extensions of master concept plans may be granted as follows:
 - a. An approved master concept plan for a phase of or an entire planned development which has been vacated due to a failure to proceed on the applicant's part may be extended by the town council for a period of no more than two years from the date of the extension based on the following findings of fact:
 - 1. The master concept plan is consistent with this code and the current Fort Myers Beach Comprehensive Plan, including, but not limited to, density, intensity, and concurrency requirements;
 - 2. The development shown by the master concept plan has not become incompatible with existing and proposed uses in the surrounding area as the result of development approvals issued after the original approval of the master concept plan; and
 - 3. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.
 - b. An application for an extension may be filed at any time after the vacation of the

master concept plan and must consist of the following:

1. A completed application form provided by the director;
 2. The approved master concept plan;
 3. The applicable zoning resolution;
 4. A written statement describing how the criteria listed in subsection (4)a. above have been met; and
 5. A fee, in accordance with an adopted administrative code.
- c. No more than two extensions may be granted for any development or phase thereof.
- (6) (5) Phasing plans may be amended in accordance with § 34-214.

DIVISION 6. INTERPRETATIONS, ENFORCEMENT, AND SPECIAL ADMINISTRATIVE ACTIONS

Sec. 34-265. Requests for interpretation of this code.

Where a question arises as to the meaning or intent of a section or subsection of this code, a written request stating the area of concern and the explicit interpretation requested shall be submitted on forms provided by the director.

- (1) The director may render decisions of an administrative nature, such as but not limited to:
 - a. Proper zoning classification for a use not specifically addressed; and
 - b. Procedures to follow in unusual circumstances.
- (2) Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the town council for its consideration [\(see § 34-90\)](#).

Sec. 34-268. Administrative setback variances.

(a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174–34-1176, and 34-1744 of this chapter under the following circumstances:

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or

additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:

- a. An increase in the height of the structure; or
- b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.

- (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
- (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
- (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction.
- (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
- (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.

[\(7\) Requirements for large satellite dishes may be modified as provided in § 34-1175\(a\)\(6\).](#)

(b) The director, prior to approving the modifications, must make the following findings of fact:

- (1) There are no apparent deleterious effects upon the adjoining property owners;
- (2) The modifications will not have an adverse impact on the public health, safety, and welfare; and
- (3) The modifications will be the minimum required.

(c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86.

Table 34-3 — Dimensional Regulations in Conventional Zoning Districts

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

ZONING DISTRICT	Setbacks <i>(see § 34-638 for explanation and exceptions)</i>						Lot size <i>(see § 34-637 for explanations and exceptions)</i>			F.A.R. <small>§34-633</small>	Building Coverage <small>§ 34-634</small>	Density <small>§ 34-632</small>	Height <small>(see § 34-631)</small>	
	area	width	depth	ratio	percentage	feet	stories							
RS Residential Single-family	20 <u>25</u>	10 <u>7.5</u> <i>(8)</i>	7 <u>7.5</u> <i>(8)</i>	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3
RC Residential Conservation	10 <u>25</u>	7 <u>7.5</u>	5 <u>7.5</u>	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3
RM Residential Multifamily	20 <u>25</u>	20 <u>20</u> <i>(6)</i>	7 <u>20</u> <i>(6)</i>	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
CR Commercial Resort	10	20	15	20	25	50	20,000	100	100	1.2	—	(3)	30	3
CM Commercial Marina	20	20	20	20	0	50	20,000	100	100	1.0	—	(3)	35	3
CO Commercial Office	10	10	7	20	25	50	7,500	75	100	1.2	—	(3)	30	3
SANTOS	10	7	5	20	25	50	5,000	50	100	0.5	—	(1), (2), (3)	25	3
IN Institutional	20	10	7	20	25	50	7,500	75	100	0.8	—	(3)	35	3
CF Community Facilities	20	15	10	20	25	50	N/A	N/A	N/A	0.1	—	(3)	35	3
BB Bay Beach	— see § 34-651(b) —													
EC Environmentally Critical	20	25	—	25	20	50	(7)	N/A	N/A	.01	—	(7)	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).
 Note (2): See § 34-638(d)(3)a.
 Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.
 Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.
 Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.
 Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot ~~10-foot~~ side setback.
 Note (7): See § 34-652(e)(3).
 Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.

**ARTICLE III.
ZONING DISTRICT REGULATIONS**

**DIVISION 3. EXPLANATION OF
PROPERTY DEVELOPMENT
REGULATIONS FOR
ALL ZONING DISTRICTS**

Sec. 34-632. Density.

Residential density cannot exceed the maximum levels established in the Fort Myers Beach Comprehensive Plan.

- (1) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (3) **Existing subdivisions.** In existing subdivisions where lots are smaller than 15,000 square feet each:
 - a. Residential densities may be computed based on the actual lot size plus one-half the width of adjoining streets and ~~canals water bodies, but in no case may more than 35 feet be counted as the allowance for one-half of an adjoining water body.~~
 - b. Computed densities greater than 1.5 DU/acre may be rounded up to two dwelling units where two-family and multifamily dwelling units are permitted.
 - c. This method for determining densities cannot be used for three or more lots that are being combined into a development project.
- (4) *[this subsection unchanged]*
- (5) *[this subsection unchanged]*
- (6) *[this subsection unchanged]*

Sec. 34-638. Minimum setbacks.

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) **Exceptions to setback dimensions.** In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in § 34-991–1010.
 - (1) **Exceptions to all setbacks.**
 - a. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*

- c. *[this subsection unchanged]*
- d. *[this subsection unchanged]*
- e. *[this subsection unchanged]*
- f. Two-family dwelling units. If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision.

(2) **Exceptions to street setbacks.**

Certain structures are exempt from the street setback requirements as follows:

- a. *[this subsection unchanged]*
- b. ~~Reserved. Porches, balconies, and stoops. Porches, balconies, and stoops may extend up to 10 feet into the street setback zone of residential buildings, provided that:~~
 - 1. ~~Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop; and~~
 - 2. ~~No portion of a porch or balcony and no walls or screened areas may be closer than 10 feet to the edge of any street right-of-way or street easement.~~
- c. *[this subsection unchanged]*
- d. *[this subsection unchanged]*
- e. *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) *[this subsection unchanged]*

**DIVISION 4. CONVENTIONAL
ZONING DISTRICTS**

Sec. 34-652. EC (Environmentally Critical) zoning district.

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) **Permitted uses.** In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, beaches, or critical wildlife habitats, as applicable, including:

**DIVISION 5. REDEVELOPMENT
ZONING DISTRICTS**

Subdivision II. DOWNTOWN Zoning District

Sec. 34-674. Building placement.

(a) *Build-to lines established.* [this subsection unchanged]

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

(1) For principal buildings:

a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:

1. In Times Square, as defined on Figure 34-6, the minimum rear setback is 10 feet.
2. In areas where parking garages could be built, as defined on Figure 34-7, buildings shall be placed so as not to preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.

~~3. Minimum (rear) setbacks of 25 feet shall also be observed along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9.~~

b. Minimum side setbacks are 5 feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square (see also § 34-674(b)(1)c).

c. Minimum setbacks from water bodies are set forth in § 34-638(d)(3).

d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing.
- (3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
- (4) Hiking and nature study, including pedestrian boardwalks and dune crossovers.
- (5) Outdoor education, in keeping with the intent of the district.
- (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. **These activities and uses include passive recreation and that active recreation that requires requiring no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below).** Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance, see chapters 14 and 27). **Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).**
- (7) Wildlife management, as wildlife preserves.

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

- (1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).
- (2) Nature study center, noncommercial, and its customary accessory uses.
- (3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

(f) [this subsection unchanged]

- (2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

Sec. 34-676. Circulation and parking.

(a) *Off-street parking reductions.* The DOWNTOWN district is planned as a “park-once” district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. For these reasons, substantial reductions are allowed to the normal off-street parking requirements found in § 34-2020. The follow percentages shall be multiplied by the number of off-street parking spaces normally required by § 34-2020 to determine the adjusted off-street parking requirements along various streets in the DOWNTOWN district:

- (1) Old San Carlos Boulevard, multiply by 50%.
- (2) ~~Times Square pedestrian plaza (see Figure 34-6), multiply by 0%.~~
- (3) ~~(2) Times Square and~~ Bayfront pedestrian plazas (see Figure 34-6), multiply by 0% for existing building space and multiply by 50% for new building space. No parking spaces may be provided in the ~~Times Square or~~ Bayfront pedestrian plazas, but the required spaces must be located within 750 feet in single-purpose, shared, or joint-use parking lots (see division 26 of this chapter).
- (4) ~~(3)~~ All other streets in the DOWNTOWN district, and all land on Crescent Street regardless of zoning district, multiply by 67%.

- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*
- (e) *[this subsection unchanged]*
- (f) *[this subsection unchanged]*

Subdivision IV. VILLAGE Zoning District

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

- (a) *[this subsection unchanged]*
- (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) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, ~~park trailer, model,~~ or recreational vehicle, regardless of lot size.

(c) *[this subsection unchanged]*

(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) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (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, CWO0-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. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. *[this subsection unchanged]*
 - d. **All travel trailers, motor homes, or camping trailers may not be 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.
 - e. *[this subsection unchanged]*

Subdivision V. CB Zoning District

Sec. 34-702. Applicability.

(a) *[this subsection unchanged]*

(b) **Enlarging or replacing buildings for existing commercial uses.** The regulations in this subdivision also apply to the following activities:

- (1) **Physical enlargement of buildings or structures housing containing existing commercial uses,** provided that the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code, and
- (2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in § 34-633.

(c) *[this subsection unchanged]*

(d) *[this subsection unchanged]*

**ARTICLE IV.
SUPPLEMENTAL REGULATIONS**

**DIVISION 2. ACCESSORY USES,
BUILDINGS, AND STRUCTURES**

Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.

~~(a) *Satellite dishes.* Satellite dishes shall be permitted as accessory uses subject to the following:~~

- ~~(1) Dishes shall comply with the minimum side and rear property line setbacks for the zoning district in which located; and~~
- ~~(2) Satellite dishes shall not be placed closer to the street right-of-way than the principal building.~~

(a) *Satellite dishes.* The following restrictions apply to satellite dishes that are installed as accessory structures if the dishes exceed two meters (78.74 inches) in diameter in zoning districts that allow Retail/Open or Lodging/Open land use sub-groups (see Table 34-2) or if the dishes exceed

one meter (39.97 inches) in diameter in all other zoning districts.

- (1) **Setbacks.** Satellite dishes must meet the minimum requirements for accessory structures in § 34-1174(b)–(d).
- (2) **Allowable size.** No satellite dish may exceed ten feet in diameter.
- (3) **Location and placement.**
 - a. **Except as provided below, satellite dishes may not be mounted on a roof or on any other building surface.**
 - b. **Exception.** Satellite dishes may be mounted on buildings that exceed 35 feet in height (as measured in accordance with § 34-631(b)), provided the satellite dish is not visible at ground level from any abutting right-of-way, street easement, or any property under separate ownership and zoned or used for residential purposes.
- (4) **Height.** Ground-mounted satellite dishes may not exceed ten feet in height.
- (5) **Landscaping.** Ground-mounted satellite dishes exceeding two meters (78.74 inches) in diameter must include a landscaped buffer of at least three feet in width between the facility and any right-of-way or ingress/egress or access easement. The buffer must be at least four feet in height at installation and be maintained at a minimum of five feet in height within one year after time of planting.
- (6) **Administrative variances.** The director may modify requirements of subsection (a) where an applicant can demonstrate in writing that full compliance with these provisions will materially limit transmission or reception with the proposed satellite dish. See § 34-268. The director may not modify any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited.

(b) **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.
- (2) Amateur radio antenna/towers over 50 feet in height may be permitted by special exception in any zoning district.

DIVISION 8. AUTOMOTIVE BUSINESSES

Sec. 34-1351. Automobile repair

(a) All services performed by an automobile repair establishment, including repair, painting, and body work activities, shall be performed within a completely enclosed building.

(b) Whenever an automotive repair establishment is within 75 feet of a residential use, all refuse and vehicle parts shall be stored within a completely enclosed area.

(c) New or expanded automobile repair establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)) or as a special exception where allowed by Tables 34-1 and 34-2 in § 34-622.

DIVISION 10. CARE AND ASSISTED LIVING FACILITIES

Sec. 34-1411. Assisted living facilities.

(a) **Location.** Assisted living facilities (ALF's) may be located in zoning districts by right or by special exception, as specified in Tables 34-1 and 34-2 in § 34-622 the district use regulations, but they are subject to the maximum density for the land use category applicable to the subject property, with density calculated in accordance with §§ 34-1415.

(b) **Design.** An assisted living facility must be designed so as to appear as, and be compatible with, adjacent residential buildings.

(c) **Parking.** For parking requirements, see § 34-2020(d)(1).

DIVISION 11. COMMERCIAL ANTENNAS AND COMMUNICATION TOWERS

Sec. 34-1441. Purpose and intent.

(a) The purpose of this division is to regulate commercial antennas, the structures on which they are located, and communication towers. Wireless telephone service providers are also affected by F.S. 365.172.

(b) Cellular telephones and other personal communications services rely on a network of antennas. Due to its location, Fort Myers Beach can be served partially by nearby antennas on the mainland and partially by antennas placed on tall buildings within the town. Only rarely, if ever, will a free-standing communications tower be needed to support any type of commercial antenna. These regulations are designed to facilitate the location of commercial antennas on tall buildings and also to provide a procedure for approving a new communication tower where it can be demonstrated conclusively that one is required.

(c) Amateur radio antenna/towers and satellite dishes are not regulated by this division; see § 34-1175.

Sec. 34-1443. Commercial antennas mounted on alternative support structures.

(a) **Zoning districts.** Commercial antennas on alternative support structures may be approved in all zoning districts, except that no commercial antenna may be permitted on a single family, duplex, or two-family home or its accessory building or structure.

(b) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

(d) *[this subsection unchanged]*

Sec. 34-1444. Commercial antennas mounted on communication towers.

(a) **Required zoning approvals.** New communication towers suitable for commercial antennas may be approved by special exception, as provided in division 2 of article III of this chapter, subject to the additional requirements of this division. Special exception applications for communication towers must also include the same documentation for wireless communication facilities

required by Lee County through its land development code.

(b) *[this subsection unchanged]*

(c) **Development standards for communication towers.** The owner/operator of any new communication tower must also obtain a development order and comply with the specific application requirements and development standards for wireless communication facilities communication towers required by Lee County through its land development code.

**DIVISION 12.
DRUG PARAPHERNALIA**

Sec. 34-1552. Determination of paraphernalia.

In determining whether an object is drug paraphernalia, the special master, hearing examiner, court, jury, or other enforcing authority shall consider, in addition to all other logically relevant factors, the following:

(1) *[remainder of section unchanged]*

**DIVISION 13.
ENVIRONMENTALLY SENSITIVE AREAS**

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures as defined in § 6-333, is prohibited seaward of the 1978 coastal construction control line as established by the state department of environmental protection, as such line existed in 1988. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652). Regulations for minor structures in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366.

(b) For purposes of this section, minor structures mean:

(1) pile-supported elevated dune and beach walk-over structures,

- ~~(2) beach access ramps and walkways,~~
- ~~(3) stairways,~~
- ~~(4) fences, and~~
- ~~(5) pile-supported viewing platforms, boardwalks, and lifeguard support stands.~~

(b) ~~(c)~~ Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.

(c) ~~(d)~~ No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see § 10-415(b)).

(d) ~~(e)~~ No development will be permitted which alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.

DIVISION 17. FENCES, WALLS, AND ENTRANCE GATES

Sec. 34-1745. Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416. Where buffers are required by other provisions of this code, this division will not interpreted to restrict the height, location, or other features of required buffers.

Sec. 34-1749. Entrance gates.

(a) Entrance gates are not permitted on public or private streets. Decorative entrance features that do not restrict access may be placed along public or private streets provided permission is granted by the town and others entity with authority over the right-of-way or easement.

(b) Entrance gates may be placed on private property that is not subject to any access easements in order to control access to a private parking lot or to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets.

(c) Access for emergency vehicles must be provided to any existing entrance gates on private streets.

- (1) Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.
- (2) If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

DIVISION 22. LIGHTING STANDARDS RESERVED

Sec. 34-1831. Purpose and applicability of division.

(a) Purpose. The purposes of this division are:

- (1) to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass through regulation of the form and use of outdoor lighting, and
- (2) to conserve energy and resources while maintaining night-time safety, utility, security, and productivity.

(b) Applicability. All new luminaires, regardless of whether a development order is required, must comply with the provisions and standards of this division.

(c) Exemptions. The following are generally exempt from the provisions of this division:

- (a) Emergency lighting required for public safety and hazard warning luminaires required by federal or state regulatory agencies;
- (2) Outdoor light fixtures producing light directly by the combustion of fossil fuels such as kerosene and natural or bottled gas;
- (3) Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps of output less than 100 lumens each) used for holiday decoration; and
- (4) Lighting for public roads except as provided in § 14-77.

Sec. 34-1832. Definitions.

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates a different meaning:

Back-lighted means a surface that is at least partially transparent and is artificially illuminated from behind.

Direct light means light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Footcandle means the quantify of light striking a surface, measured in lumens per square foot.

Full cutoff means that a light fixture in its installed position does not emit any light, either directly or by reflection or diffusion, above a horizontal plane running through the lowest light-emitting part of the fixture. Additionally, the fixture in its installed position does not emit more than 10% of its total light output in the zone between:

- (1) the horizontal plane through the lowest light-emitting part of the fixture, and
- (2) 10 degrees below the horizontal plane (80 degrees above the vertical plane).

Lumen means a unit of light emission. For example, incandescent light bulbs with outputs of 60, 75, and 100 watts emit approximately 840, 1170, and 1690 lumens respectively.

Luminaire means a complete unit for producing artificial light, commonly referred to as a lighting fixture.

Mercury vapor means a high-intensity discharge light source that is filled with mercury gas under pressure and which emits a blue/white light.

Non-essential lighting means lighting that is not necessary for an intended purpose after the purpose has been served. For example, lighting for a business sign, architectural accent lighting, and parking lot lighting may be considered essential during business or activity hours, but is considered non-essential once the activity or business day has concluded.

Shielded means that an outdoor light fixture that is fully and permanently blocked by a physical device or by its integral design from discharging light in specific directions.

Sec. 34-1833. Technical standards for lighting.

(a) **Generally.** This section contains minimum and maximum standards that apply whenever outdoor lighting is provided.

- (1) In addition to the standards and criteria in this section, there are standards for artificial lighting near sea turtle nesting habitat in ch. 14, article II of this code.

- (2) When specific standards are not addressed in these sources, the standards of the Illuminating Engineering Society of North America (IESNA) will apply.

(b) **Specific standards.**

- (1) **Illuminance.** The following table indicates minimum and maximum illumination levels. These levels are specified for general use categories and are measured in footcandles on the task surface (for example, the lighted parking lot or walkway) with a light meter held parallel to the ground, facing up, unless otherwise specifically stated.

<u>Use/Task</u>	<u>Minimum</u> (1)	<u>Maximum</u> <u>(average)</u>
		(1), (2), (3), (4)
<u>PARKING LOTS – MULTI-FAMILY:</u>		
Medium vehicular/pedestrian activity	0.8	3.2
Low vehicular/pedestrian activity	0.3	1.2
<u>PARKING LOTS – COMMERCIAL/ INSTITUTIONAL/ MUNICIPAL:</u>		
Medium activity, e.g., major shopping districts, cultural/civic/ recreational facilities	0.8	3.2
Low activity, e.g., neighborhood retail, offices, employee parking, school/church parking	0.3	1.2
<u>NON-RESIDENTIAL WALKWAYS & BIKEWAYS</u>	0.3	1.5
<u>CANOPY OVER FUEL PUMPS</u>	6.0	30.0

NOTES:

(1) The specified illumination levels are the initial levels to be measured at the time of final inspection for a certificate of compliance. Outdoor lighting must be maintained so the average illumination levels do not increase above the specified maximum values. The minimum illumination levels may decrease over time consistent with the Light Loss Factor (LLF) associated with the installed fixtures.

(2) In no case may the illumination exceed 0.5 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.2 footcandles measured at 10 feet from the property line onto the adjacent residential property.

(3) Maximum values listed in this column are the average of actual measurements taken throughout the lighted area at the time of final inspection.

(4) Where all-night safety or security lighting is to be provided, the lighting intensity levels should provide the lowest possible illumination to discourage crime and undesirable activity and to effectively allow surveillance, but may not exceed 50 percent of the levels normally permitted for the use as specified in this code.

(2) **Lamp standards.** Lamp types and colors must be in harmony with the adjacent community, any special circumstances existing on the site, and with surrounding installations. Lamp types must be consistent with the task and setting and should not create a mix of colors unless otherwise specifically approved by the director for a cause shown. Specifically, mercury vapor lamps are prohibited. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the lamp type standards provided that all other applicable provisions are met.

(3) **Luminaire (fixture) standards.** Fully shielded, full cutoff luminaires with recessed bulbs and flat lenses are the only permitted fixtures for outdoor lighting, with the following exceptions:

- a. Luminaires that have a maximum output of 260 lumens per fixture (the approximate output of one 20-watt incandescent bulb), regardless of number of bulbs, may be left unshielded provided the fixture has an opaque top to keep light from shining directly up.
- b. Luminaires that have a maximum output of 1,000 lumens per fixture (the approximate output of one 60-watt incandescent bulb), regardless of number of bulbs, may be partially shielded, provided the bulb is not visible, and the fixture has an opaque top to keep light from shining directly up.
- c. Sensor-activated lighting may be unshielded provided that:
 - 1. The light is located in such a manner as to prevent direct glare and lighting into properties of others or into a public right-of-way, and
 - 2. The light is set to only go on when activated and to go off within five minutes after activation has ceased, and

- 3. The light must not be triggered by activity off the property.
- d. Flood or spot luminaires with a lamp or lamps rated at 900 lumens or less may be used except that no spot or flood luminaire may be aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, or directed skyward, or directed towards the shoreline areas.
 - 1. The luminaire must be redirected or aimed so that illumination is directed to the designated areas and its light output controlled as necessary to eliminate such conditions.
 - 2. Illumination resulting from such lighting must be considered as contributing to the illumination levels specified herein.
- e. All externally illuminated signs must be lighted by shielded fixtures mounted at the top of the sign and aimed downward. Illumination resulting from sign lighting must be considered as contributing to the illumination levels specified herein.
- f. Fixtures used to accent architectural features, materials, colors, style of buildings, landscaping, or art must be located, aimed, and shielded so that light is directed only on those features. Such fixtures must be aimed or shielded to minimize light spill onto adjacent properties or into the night sky in conformance with illumination and luminaire standards.
- g. All non-essential exterior commercial lighting must be turned off after business hours.

(4) **Luminaire mount standards.** The following standards apply to luminaire mountings.

- a. **Freestanding luminaires.** Light poles must be placed on the interior of the site. When light poles are proposed to be placed on the perimeter of the site, specific consideration should be addressed to compliance with the illumination standards at the property line and off the property onto adjacent residential property. The maximum

height of light poles for parking lots and vehicular use areas may not exceed _____ feet measured from the ground level directly below the luminaire to the bottom of the lamp itself. Light poles located within 50 feet of a residentially zoned property or use may not exceed _____ feet. Poles used to illuminate pedestrian walkways may not exceed _____ feet.

Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the mounting height standards provided that all other applicable provisions are met.

- b. **Building-mounted luminaires.** These luminaires may only be attached to the building walls and the top of the fixture may not exceed the height of the roof, or _____ feet above ground, whichever is lower.
- c. **Canopy lighting.** Luminaires mounted on the underside of a canopy must be fully shielded full cutoff fixtures. As an alternative (or supplement) to canopy ceiling lights, indirect lighting may be used where the light is beamed upward and then reflected down from the underside of the canopy. When this method is used, light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy. No part of the canopy may be back-lighted. Lights may not be mounted on the top or sides (fascias) of the canopy. The sides (fascias) of the canopy may not be illuminated in any manner.
- d. **Trees and landscaping.** To avoid conflicts, locations of all light poles and fixtures must be coordinated with the locations of all trees and landscaping whether existing or shown on the landscaping plan. Vegetation screens may not be employed to serve as the means for controlling glare. Glare control must be achieved through the use of such means as cutoff fixtures, shields, and baffles, and appropriate application of fixture mounting height, wattage, aiming angle, and fixture placement.

Sec. 34-1834. Permits for lighting.

(a) Development order and building permit criteria. The applicant for any development order or building permit involving outdoor lighting fixtures, must submit as part of the application evidence that the proposed work will comply with the outdoor lighting standards of this code. Specifically the submission must include the following:

- (1) Plans indicating the location on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices.
- (2) A detailed description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices. The description must include manufacturer's catalogue cuts and drawings, including pictures, sections, and proposed wattages for each fixture.
- (3) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometric data, such as that furnished by the manufacturer of the proposed illuminating devices, showing the angle of cut-off and other characteristics of the light emissions including references to the standards contained herein.
- (4) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometrics in initial footcandle output for all proposed and existing fixtures on-site shown on a 20' by 20' grid on an appropriately scaled plan. On-site lighting to be included in the calculations must include, but is not limited to, lighting for parking lot, canopies, and building-mounted and recessed lighting along the building facades and overhangs. The photometric plan must include a table showing the average, minimum, and maximum footcandles of illumination on the site and within 50 feet of the site and the calculations deriving the averages. Evidence must be provided demonstrating that the proposed lighting plan will comply with the requirements of this code. The use of a light loss factor (LLF) is not permitted in these photometrics. This photometric plan must be coordinated with the landscape plan to identify the location of trees and other landscaping features with respect to the lighting devices. Rejection or

acceptance of the photometric plan will be based on this code.

(b) Compliance.

- (1) Prior to the final inspection for a certificate of compliance pursuant to § 10-183, site-verified footcandle readings must be provided demonstrating that the outdoor lighting, as installed, conforms with the proposed photometrics and the letter of substantial compliance provided by a registered professional engineer must include a certification that the outdoor lighting is in compliance with this code.
- (2) If any outdoor light fixture or the type of light source therein is changed after the permit or development order has been issued, a change request or development order amendment must be submitted for approval together with adequate information to assure compliance with this code. This request or amendment must be approved prior to the installation of the proposed change.
- (3) Outdoor lighting must be maintained in compliance with this code.

(c) **Existing outdoor lighting.** Light pole height requirements do not apply to existing light poles. Existing light fixtures must be brought into compliance with this code by January 1, 2010. Any fixtures replaced after the date of the adoption of this code must be replaced with fixtures that comply with the standards established herein. Illuminance levels specified in this code apply to all outdoor lighting.

Secs 34-1835-1860. Reserved.

**DIVISION 26-A.
PERFORMANCE STANDARDS**

Sec. 34-2032. Performance standards, creation of nuisance.

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

- (1) not be injurious or offensive and thereby constitute a nuisance to the owners and

occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, light pollution, or glare; and

- (2) not cause light from a point source of light to be directed, reflected, or refracted beyond the boundary of the parcel or lot, onto adjacent or nearby residentially zoned or used property or onto any public right-of-way, and thereby constitute a nuisance to owners or occupants of adjacent premises, nearby residents, or to the community; and
- (3) ensure all point sources of light and all other devices for producing artificial light are shielded, filtered, or directed in such a manner as to not cause light trespass; minimum standards are provided in division 22 of this article.

DIVISION 26. PARKING

Sec. 34-2020. Required parking spaces.

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) **Minimum parking standards.**
- (1) **RESIDENTIAL USES.** *[this subsection unchanged]*
- (2) **COMMERCIAL USES.** *[this subsection unchanged]*
- (3) **MISCELLANEOUS USES.** *[this subsection unchanged]*
- (4) **COMBINED USES.** The number of parking spaces required for combined uses shall be the total of the spaces required for each separate use established by this schedule. Exceptions are as follows:
 - a. **Joint use of parking lots.** As provided in § 34-2018,
 - b. **Multiple-occupancy complexes.** This subsection applies to multiple-occupancy complexes where five or more individual business establishments are located and which all share a common parking area. Specifically excluded from this subsection are theaters and hotels. Minimum requirements are as follows:

1. If the complex contains less than 25% of its gross floor area as restaurants, bars, and cocktail lounges, 2 spaces per 1,000 square feet.
2. If the complex contains 25% to 50% of its gross floor area as restaurants, bars, and cocktail lounges, 4 spaces per 1,000 square feet.
3. If the complex contains 50% to 75% of its gross floor area as restaurants, bars, and cocktail lounges, 6 spaces per 1,000 square feet.
4. If the complex contains over 75% of its gross floor area as restaurants, bars, and cocktail lounges, 8 spaces per 1,000 square feet.

DIVISION 32-A. SHORT-TERM RENTALS

Sec. 34-2394. Enforcement and penalties.

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) For properties on the registry of pre-existing weekly rentals (see § 34-2392), the following additional requirements shall apply:
 - (1) *[this subsection unchanged]*
 - (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 special master: hearing examiner:**
 - a. *[remainder of section unchanged]*

**ARTICLE V.
NONCONFORMITIES ¹**

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3273. General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (3) Minimum residential setbacks on nonconforming lots shall be as follows:
 - a. Street and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
 - b. Side setbacks shall be 10% of lot width, or 5 feet, whichever is greater, rear, and water body setbacks shall be as set forth for lots in the RC zoning district (see Table 34-3).
 - c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.
 - d. Certain nonconforming lots may qualify for an administrative setback variance (see § 34-268).
- (4) *[remainder of section unchanged]*

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 21, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

VI. ADMINISTRATIVE AGENDA

I. Discussion of Chapter 34 setback regulations

Town Manager Segal-George announced at the last meeting the Council directed her to ask Bill Spikowski to prepare a memorandum that would compare or contrast the setbacks prior to the adoption of the new Chapter 34. Bill Spikowski has prepared this memo and is present for discussion.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to immediately change back to the prior setback requirements with the adjustment to the new RS/RC/RM zoning designations they have, so that all front setbacks will be 25-feet and all side setbacks (water or non-water) are 7 ½ or 5 feet, as listed. The rear setbacks to remain at 20- feet. This was an error in the manner it was published after it was voted on by the Town Council. (Motion amended) Made by Mayor Daniel Hughes to have an exception pertaining to side setbacks on waterfront lots. The waterfront lots to keep the 10-foot and 20-foot provision on multi-family.

Discussion: Mayor Hughes reviewed the motion for clarification.

Attorney Roosa indicated there are two possibilities. The original motion as made was consistent with what Council member Van Duzer is stating. If this is so, the published ordinance was just a scrivener's error and can be corrected. If the Council will state this was the intent a correction will be made in the ordinance. The ordinance would have been published in error. If this is not the case, an amendment to the ordinance must take place.

Vice Mayor Cain raised the issue of a past discussion on porches. Council member Van Duzer replied he has consistently stated the Town has a system that works using the existing setbacks and existing height restrictions. When he compared these to the floor-area-ratio anything built in the last number of years fit within the floor-area-ratio proposed as presented. Why was this needed? He felt it more simple and easier to go back to the existing setbacks that the Town had and used on a regular basis. Residential design standards were discussed and this is where the idea of porches not encroaching if the setbacks were changed. They wanted them to come closer to the road. He wanted to readdress the residential design standards at a later date. This topic was dropped and he felt it was understood by removing the floor-area-ratio they would go back to the standard setbacks from the past. He commented he felt that the floor-area-ratio was attacking private property rights. Two other Council members at the last meeting agreed they felt this was the original motion.

Mayor Hughes agreed to the rationale for eliminating the FAR that setbacks provided adequate standards. This is not the same as accepting all of the old setback requirements. He has always been in favor of the increased side yard setback. He was in favor of the larger setbacks on all, particularly the 25-foot front yard setback.

Attorney Dick Roosa needed clarification on the motion. Council member Van Duzer stated that it was his intention at the time of the motion they were going back to the old original setbacks used previously.

Council member Thomas concurred with Council member Van Duzer. His interpretation was that he wanted the old setbacks.

Vice Mayor Cain is unsure if a motion is needed based on the information provided. Attorney Roosa added that the motion is to correct the published ordinance.

VOTE: (Amended) Motion fails due to lack of second.

VOTE: Motion passes unanimously.

Council member Van Duzer feels the Council is now back to the point they were suppose to be. He felt a motion should now be brought forward on the side setbacks for waterfront lots, if it is the desire of the Town Council.

Bill Spikowski is not clear on which zoning district this motion applies to and what the new rules will be. He questioned if this pertained to the residential zoning districts of RS/RC/RM? Council member Van Duzer replied this is correct.

Bill Spikowski reviewed for all three zoning districts the front setback would be 25, which was the previous rule under Lee County. All three for the rear setbacks would be 20. What about the side setbacks? The RS-2 zoning districts were also questioned.

Council member Van Duzer would like the RS-2 limited area up around Matanzas be designated the same as before.

Bill Spikowski added that the non-conforming section is different in the old code than new.

Council member Van Duzer reviewed the multifamily buildings before that were 20-foot should stay 20-foot.

Due to much conversation taking place with regard to zoning categories and various setbacks, Bill Spikowski determined he would like to write up this correction and have it available for review at the next meeting.

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 5, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

VI. ADMINISTRATIVE AGENDA

F. LDC Chapter 34- Confirmation of residential setback regulations

Dan Folke has talked with both parties who spoke earlier at Public Comment. He is unsure how many properties exist with this situation. After the Council meeting on April 21st, he forwarded this information to Pam Houck to put them on notice to correct the Scrivener's error. He addressed the issue raised by Elaine Jett and commented that the previous code had a section which allowed a reduced setback for a corner lot on a secondary street. This section was removed from the code because the new reduced setbacks were to be made. With the change made, the Town would need to come back and add in the section pertaining to corner lots or a variance at this time would need to be sought.

Dan further addressed the case on Miramar. The setbacks for the RC district are increasing by 2 ½ feet. He referred to tables as provided to Council. Proposed for a nonconforming lot you would use the setbacks of the RC district (5 feet) because they have been put back to the Lee County rule which is 10% of the lot width or 5 feet. The minimum lot width for RC is 45 feet and if you have a 50-foot lot which is more than 4,000 square foot and deeper than 80 it is conforming and the 7 1/2 foot setback would apply. The rule as distributed on March 3 was a 5-foot setback. This homeowner moved forward with plans and submitted based on the 5-foot setback.

Mayor Hughes questioned if an exception can be made for these situations as noted above? Did they all apply for building permits based on the draft of the ordinance with the setback provisions? Dan replied that some have applied for permits and others have had plans drawn at a considerable expense since the March 3, 2003 meeting.

Council member Rynearson questioned if relief can be given to those who prove work had been completed during the time period from adoption to the change? Attorney Dick Roosa replied if they can identify the class. They must have expended funds to establish an estoppel argument.

Town Manager Segal-George feels if the Council is willing to give this authority to Town staff she and Dan can handle this matter.

Vice Mayor Cain commented if the County ordinance they will revert back to is more strict? Town Manager Segal-George replied in some cases they are more strict. Dan added that all setbacks are increasing by 1/2 foot with the exception of RS waterfront lots. All street setbacks are increasing by at least 5 feet from what is distributed after March 3.

The Town Council provided direction to the Town Manager to deal with each case individually, if property owners had expended funds and had building plans drafted or permitting issues based on the new ordinance.

TOWN OF FORT MYERS BEACH

May 6, 2003

memo

To:

Daniel Hughes, Mayor
Terry Cain, Vice Mayor
Howard Rynearson, Council Member
W. H. "Bill" Van Duzer, Council Member
Bill Thomas Council Member

Marsha Segal-George, Town Manager
John J. Gucciardo, Deputy Town Mgr.

Re: Corrections to Ord. 03-03

Attached are the correct provisions of Ordinance 03-03 for Sections 34-638, 34-3273 and Table 34-3. These corrections reflect the intent of the Town Council at the time of adoption of the ordinance but were inadvertently published in error after the final hearing.

RICHARD V.S. ROOSA
TOWN ATTORNEY

Sec. 34-638. Minimum setbacks.

- (a) **Generally.** [no change]
- (b) **Where to find minimum setback dimensions.** [no change]
- (c) **Additional wetlands buffers.** [no change]
- (d) **Exceptions to setback dimensions.** In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in § 34-991–1010.
 - (1) **Exceptions to all setbacks.** [no change]
 - (2) **Exceptions to street setbacks.**

Certain structures are exempt from the street setback requirements as follows:

 - a. **Build-to lines.** [no change]
 - b. **Reserved. Porches, balconies, and stoops.** Porches, balconies, and stoops may extend up to 10 feet into the street setback zone of residential buildings, provided that:
 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop; and
 2. No portion of a porch or balcony and no walls or screened areas may be closer than 10 feet to the edge of any street right-of-way or street easement.
 - c. **Mail and newspaper delivery boxes.** [no change]
 - d. **Bus shelters, bus stop benches, and bicycle racks.** [no change]
 - e. **Telephone booths.** [no change].
 - (3) **Water body setbacks.** [no change]
 - (4) **Exceptions for certain nonconforming lots.**
 - a. Certain nonconforming *residential* lots are subject to the modified side and rear setback requirements that are found in § 34-3273.
 - b. Certain nonconforming *mobile home* lots in the VILLAGE zoning district are subject to the modified side and rear setback requirements that are found in § 34-694.
 - c. Certain nonconforming *commercial* lots are subject to the modified side and rear setback requirements that are found in § 34-3277.

Sec. 34-3273. General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) All other regulations of this chapter shall be met, except as modified by this division.
- (2) A residential building may be placed on a single nonconforming lot provided the lot has at least 40 feet in width, 75 feet in depth, and 4,000 square feet in area.
- (3) Minimum residential setbacks on nonconforming lots shall be as follows:
 - a. Street and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
 - b. Side setbacks shall be 10% of lot width, or 5 feet, whichever is greater. , rear, and water body setbacks shall be as set forth for lots in the RC zoning district (see Table 34-3):
 - c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.
 - d. ~~c.~~ Certain nonconforming lots may qualify for an administrative setback variance (see § 34-268).
- (4) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
 - a. Density computations shall be in accordance with § 34-632.
 - b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274.
- (5) No division of any nonconforming lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275.
- (6) The burden of proof for demonstrating that a lot is a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.
- (7) The remaining lot after condemnation shall be treated in accordance with § 34-3206.

Table 34-3 — Dimensional Regulations in Conventional Zoning Districts

ZONING DISTRICT	side -waterfront lot			side -non-waterfront			water body (1) Gulf of Mexico (2)			width	depth	ratio	percentage	feet		stories
	street	rear	area	area	area	area	area	area	area					area	area	
	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)				F.A.R. §34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)		
RS Residential Single-family	±0 25	±0 7.5 (8)	7 7.5 (8)	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3		
RC Residential Conservation	±0 25	7 7.5	5 7.5	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3		
RM Residential Multifamily	±0 25	20 (6)	7 20 (6)	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3		
CR Commercial Resort	10	20	15	20	25	50	20,000	100	100	1.2	—	(3)	30	3		
CM Commercial Marina	20	20	20	20	0	50	20,000	100	100	1.0	—	(3)	35	3		
CO Commercial Office	10	10	7	20	25	50	7,500	75	100	1.2	—	(3)	30	3		
SANTOS	10	7	5	20	25	50	5,000	50	100	0.5	—	(1), (2), (3)	25	3		
IN Institutional	20	10	7	20	25	50	7,500	75	100	0.8	—	(3)	35	3		
CF Community Facilities	20	15	10	20	25	50	N/A	N/A	N/A	0.1	—	(3)	35	3		
BB Bay Beach	— see § 34-651(b) —															
EC Environmen- tally Critical	20	25	—	25	20	50	(7)	N/A	N/A	.01	—	(7)	25	2		

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).
 Note (2): See § 34-638(d)(3)a.
 Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.
 Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.
 Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.
 Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot ~~10-foot~~ side setback.
 Note (7): See § 34-652(e)(3).
 Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.