

**JOINT CITY COUNCIL/PLANNING COMMISSION MEETING  
THURSDAY, MAY 19, 2005**

Mayor Johnston called the meeting to Order at 9:00 a. m.

Councilman Rothman gave the Invocation.

Members present: Mayor Johnston, Vice Mayor Denham, Councilman Jennings, Councilman Rothman, Vice Chair Valiquette, Commissioner Bilhiemer, Commissioner Veenschoten and Commissioner Phillip Marks.

Councilman Jennings made a motion, seconded by Councilman Rothman, to excuse Councilman Brown due to illness.

The Planning Commission excused Commission Lapi, Commissioner Sprankle and Commissioner Samler by consensus.

Commissioner Valiquette led the Pledge of Allegiance.

**Presentation by the Planning Department on the current buildback policy and related major issues.**

Mr. Ken Pfalzer, Acting Planning Director spoke to the following:

- The current build back policy
  - Prohibits the reestablishment of most nonconforming uses (LDC Section 126-211) exception would be a resident single family dwelling
  - All nonconforming building to be reconstructed in its pre-disaster footprint, but does not expressly exempt compliance with limits on density and expressly requires compliance with height limits (LDC Section 126-212)
  - Establish standards for reconstruction that includes requiring compliance with a height limit of 45 feet above mean sea level (LDC Section 126-215)

He spoke to the following Land Development Code (LDC) sections:

- Section 26-211 - When a structure, which was devoted to a use not permitted in the district in which it is located; that is, a nonconforming use, is destroyed or substantially damaged by accidental fire or other natural and disastrous force the use to which such structure was devoted may not be re-established, except where the use is a non-resort residential use in the Gulf Beach Zone or the Bay Beach Zone
- Section 126-212 – When a nonconforming structure was destroyed or substantially damaged by accidental fire or other natural and disastrous force, such structure may be reconstructed within its pre-disaster gross square footage, but conforming in all other respects to the land development code requirements, including height requirements, in effect at the time of reconstruction. In case of a historic structure, as defined in Chapter 94 or described in Chapter 98, reconstruction is permitted as provided in this section, and in addition, in any manner which preserves the integrity of the structure as a historic structure
- Section 126-131 – Within the City there exists lots, structures, and which were lawful when established, but which have become prohibited or restricted under the terms of the Sanibel Plan or the LDC, or amendments. It is the intent of the LDC to permit these nonconformities to continue until they are eventually removed, but except as to most nonconforming issues, not to require them to be removed as the result of a disaster, and to allow reasonable restrictions. It is the further intent of this LDC that a nonconformity shall not be enlarged upon, expanded, intensified, or extended, nor be used as a basis for adding other structures or uses prohibited within the district

- Section 126-215 – Notwithstanding any provision to the contrary, nothing contained in this section shall authorize the reconstruction of a structure in violation of, noncompliance with, or in excess of, as the case may be, any of the following:
  - Federal flood regulations or Chapter 94 of this land development code
  - Applicable building, health and safety codes
  - State coastal construction control lines
  - Other applicable federal, state or local regulations
  - A height exceeding forty-five (45) feet above mean sea level
  - Setbacks open bodies of water, or the pre-disaster footprint, whichever is closer; but in no event, closer than ten (10) feet from an open body of water

Discussion ensued regarding build back and redevelopment studied at the same time, redevelopment a long range project, long range plan for redevelopment and issues in current LDC, and nonconforming structures, density and height.

Mr. Cuyler stated that the City does have a current build back regulation.

**Discussion between City Council members and Planning Commission members regarding buildback/redevelopment.**

Discussion ensued regarding if Captains Walk was destroyed could it be built back and the code authorizes that only a certain number could be built back due to the density and the question was raised that could Council legally adopt an ordinance that would allow any structure to be rebuilt if destroyed by a disaster.

Council decided to discuss height:

Discussion ensued regarding that build back could occur up to 45 feet and 3 levels, language in EAR and charter amendments, Mr. Cuyler stated that the Charter amendment provided for a vote of the electorate to increase height or an exception that a building height could be increased if destroyed to meet the flood elevation requirement, current policy no more than 3 levels above flood, only 3 condos unit meet the flood regulations, flood elevation established by FEMA was increase to additional 3 feet, three stories would require relief to the 45 feet ad, 4 story structures would also need relief, action by Council to increase height and falls under the exclusion it would not have to be voted on by the electorate, any timetable of a destroyed structure could receive a permit, and no one had requested a permit to re-build in advance of any possible disaster.

Mr. Pfalzer stated that build back was to re-build the building exactly as it was initially built in the same footprint and the permit could be issued quickly. but if additions were within the requested permit it would take longer to issue

Mr. Cuyler stated that Council would want to avoid special circumstances coming to Council for approval and any new regulations would need to be very specific.

Discussion ensued regarding if Council took the action to increase height and meets to standard the request would not go before the electorate, Mr. Cuyler explained that Council could adopt regulations to increase height, only properties affected by height would be multi family common ownership, height would be categorized as 35 feet above grade and 45 feet above mean sea level, policy issue to be addressed if regulations were adopted to allow increased height, staff use list to have a folder of each property on Sanibel that would state how each specific property could be re-built, current build back allows a building in the current footprint, but could not re-establish the resort use, state would not want to allow build back, but possibly would due to legal action, jurisdiction of beach was the State and City, Bert Harris a part of statute that if an ordinance substantially reduces burdens some property owner then a suit could happen, current regulations allow a structure to be built back even if it was seaward, but would lose resort use, if there were a group of buildings and part were destroyed, could the rest be torn down and all rebuilt, only those destroyed naturally could be rebuilt under the new regulations, a program that would encourage owners to provide the planning department with specific information, and a mailing to encourage residents

to provide the planning department information to help them rebuild if necessary and property owner responsibility to contact the city to prepare a file.

Public Comment:

Larry Schoop spoke to the definition of redevelopment and charter amendment of density. He stated that the charter amendment on density would give City Council broad discretion and the ability to allow density at the current level for properties. He also stated that City Council could approve in excess of those regulations in the plan if connected with redevelopment

Mr. Cuyler advised that existing density means existing physical densities in excess of those established in the Sanibel Plan where the purpose is:

Vice Mayor Denham read the following:

“Nothing in Section 3.10 (2) shall preclude City Council from permitting residential densities in excess of those in the Sanibel Plan where the purpose is:

- 1) Provide incentives for Below Market Rate Housing;
- 2) To permit redevelopment of existing parcels up to the number of existing dwelling units on May 04, 2004 provided the redevelopment is otherwise in conformance with the Sanibel Plan and the Land Development Code

Jim Henmaneck spoke to his representing a client suffering a hardship; 1124 Seagrape Lane duplex built in 1962; resort housing district, lot 104x150 feet; blend geozone 49% gulf beach ridge & 51% uplands requirement 17,000 square feet to develop, offer to buy contingent on buyer ability to tear down structure to re-build, and home across the street built in 1995 that appears to be in the same geo-zone.

Mr. Pfalzer spoke to the above-mentioned situation:

- ❖ Situation was regarding the application of the density map
- ❖ LDC allows development up to the number of units permitted by the density map
- ❖ 1124 Seagrape Lane the LDC does not allow a unit
- ❖ The Code does give exceptions for existing parcels that were parcels at the time the City incorporated
- ❖ Any lot in a modern platted subdivision was entitled to a unit provided it wasn't owned in common with the adjoining property
- ❖ Outside a modern subdivision, which was the case with Seagrape Lane or Buttonwood Lane the requirement of a minimum lot size
- ❖ 1124 Seagrape Lane too small for development in the zone it was located to be entitled for development
- ❖ Currently duplex located on property
- ❖ LDC allows the use to continue
- ❖ Ongoing discussion of use on 1124 Seagrape Lane if it could be built back
- ❖ Currently could build back in the pre-disaster footprint
- ❖ Discussion of lawfully existing density
- ❖ If property vacant or building torn down, a new dwelling would be required to meet the minimum lot size
- ❖ Could convert the duplex to a single-family dwelling in same footprint
- ❖ Under current code could not re-develop property for residential use
- ❖ Council could relax and allow application no amendment would be required because the owner would be allowed to re-develop up to the number of existing number of dwelling units
- ❖ Issue of 1124 Seagrape Lane was re-development not buildback

Discussion ensued regarding that if duplex at 1124 Seagrape Lane could be built back in the existing footprint as a single family dwelling, Captain Walk could be re-built in the same footprint, how City could

help property owner; option not allow to take out of context of re-development, could not re-build voluntarily, policy question for Council, state mandate to reduce density on barrier islands, and if destroyed could re-build a single family dwelling in the same footprint.

Mr. Cuyler stated that he was not sure 1124 Seagrape Lane could be taken out of the context of re-development due to the policy issue involved. He further stated that in the past a decision was made that a unit of density could not be rebuilt voluntarily.

Discussion ensued regarding 2 definitions of density; 1) lot size and 2) in terms of number of units; state mandate to permit the reduction in the number of units on a barrier island, 1124 Seagrape Lane wanted to decrease the physical density and increase the permitted density, permitted density was zero, similar pieces of property that do not have a permitted unit, under build back could build back in the same footprint, redevelopment context a unit could not be torn down and a new building rebuilt, usual concept of non-conformity was if regulations had changed a unit was built back in accordance with the new regulations, if the regulations allow a unit, a unit could be rebuilt, if regulations do not allow a unit there would be no permitted unit, Bert Harris does not apply because the regulations had been in place for so long, was property owners notified that property rights were changed due to the City incorporating, Bert Harris passed in 1995 and specifically states that ordinances that predate the statute would not be affected.

Jim Hemmaneck spoke a second time regarding not knowing about the building restrictions until it was put up for sale.

Discussion ensued regarding the responsibility for information was upon the property owner, down side of non-conforming issue was that a building could not be re-developed, could property owner apply for a variance, and staff had previous discussion regarding 1124 Seagrape Lane.

Louise Johnson spoke to a policy being instituted that no home could be re-built. She stated that the founding fathers decided density and many property owners lost density due to the policy. She also spoke regarding the idea of non-conformance would be brought into conformance. She further spoke to printing agendas in the newspaper.

Discussion ensued regarding the possibility of homes being lost, shared risk of living on a barrier island, density reduced on the island, original goal of dwellings was approximately 6,000 and raised to approximately 10,000, intent of founding fathers if beach zone residents destroyed to be eliminated and Mr. Cuyler stated that when the original plan was established there was no Bert Harris act; Bert Harris allows a property owner to make a claim to be found by the court to unduly burden a property owner, the owner may be entitled to a monetarily value; laws in affect for 20 yrs and the 10 units of Captains Walk were built on a piece of property under current policy and Captains Walk could rebuild 5 units (density) not the current 10 units.

Discussion ensued regarding looking at each individual case and if owners could ask for relief, but would not necessarily be granted.

Barbara Cooley spoke to more than 1 unit being extensively damaged during Hurricane Charley.

Hazel Schuller asked what was the definition of units because a rented house could be rented by bedroom and the occupational license charged per bedroom at a charge of \$15 per bedroom.

Council recessed at 11:00 a. m.

Council reconvened at 11:10 a. m.

Council decided to discuss Density:

Mr. Pfalzer called Council and the Planning Commission attention the document showing the number of nonconforming density (attached). He spoke to the multi-family sector as follows:

- ❖ Non-resort
- ❖ Resort
- ❖ Motel/Hotel
- ❖ Time Share

Mr. Pfalzer stated that there were 3 categories resort, timeshare was by definition where people on locks on individual units, but for a specific time. He further stated that the motel/hotel use was a resort use, but usually owned by an individual, corporation or consortium, and considered an undivided ownership. He explained that a resort multi-family condominium where each unit was individually owned and may have common areas.

Discussion ensued regarding the difference in resort and residential dwellings, motel/hotel undivided ownership, condo unit multi-ownership and dealt with individual, gulf beach zone resort could not be re-built as resort/condominium, but as residential, examples – single-family un-buildable lots that had homes built on them that density was an issue, 60 to 150 multi-family structures had a density more than was currently allowed, if a building had 10 units and was destroyed and the density map only allowed 5 to be built back, which 5 should be built back, Mr. Cuyler explained that the building could be built back, but the code does not address the specific units that could be built back, but if the build could be built back then it would be built back in terms of current density, which would be only 5 units or another interpretation would conform to the existing density of 10 units, presumed in a build back scenario that over 50% interpretation the building could buildback all units, but was not clear in the current Code, whether units were builtback according to today's current density (5 units) or 10 units at today's current physical density, building could be built back on the same footprint, if a unit were lost in a re-built back disaster situation, then the unit would be built back no matter the density in a non-conforming area, the issue may be what the use of the building would be; and two different issues; policy Council wants to establish versus what the existing regulations say.

Mr. Pfalzer gave a hypothetical situation: "A person and business associates own a 100 unit hotel with undivided ownership and if all units could not be built back then there would be the lose of units."

Council reflected that the motel/hotel issue was different than the resort/condo. Another hypothetical issue; "A condominium was built and never occupied as someone home, but only rented out for commercial rental purposes," some hotel/motel units were owned individually, there were 35 to 50 single-family dwellings that were built on a 14,000 square foot lot above the permitted density, but now requires 20,000 square foot lot, and if destroyed could not be built back in accordance with current code, Sanibel Shores called a modern platted subdivision would not have minimum standard lot size, problems exists outside the modern platted subdivision approved by the City such as Sanibel Highlands, San-Cap Rd, Wulfert Peninsula and Sanibel Estate, possible amendment could be made to say, "a single unit could be built back even though their lot does not conform," single family swelling would be applied, but if the dwelling was a duplex there in lies the problem, sense of Council to direct staff that there would be a unit for build back, if a dwelling was built back, the building would have to be built back in accordance with the flood regulations and intent of code was to allow a building to be built back under build back, not re-development.

### **Density – Resort – Condominium**

Discussion ensued regarding build back and density as it applies with Sundial, final phase built under court settlement, earlier phase exceeds density, West Wind Inn existing 104 units and under build back they would be allowed to build back 30 units.

Mr. Cuyler explained that condominium was a form of ownership, and could be a residential ownership or transient ownership.

Discussion ensued regarding a hotel/motel could be on by a single owner, corporate ownership or individual owner of each individual owner with common areas where a rental pool operates the rental use, zoning does not look at ownership, but use.

Mr. Cuyler stated that Council could look at situations and see how the policy addresses certain issues. He also stated that Council could adopt a policy including a building with 20 units: 10 residential and 10 rental and it was decided that all were residential then that would be Council's decision or Council could consider each situation and make a decision.

Discussion ensued regarding pre-disaster definition that classified each structure, how to define the structure as pre-disaster, partnership ownership, zoning perspective looking at number of units, resort area, code could be interpreted that if a building were destroyed all units could be built back with all existing units, if there was a 100 unit density hotel, and use was residential it would built back to pre-disaster density.

Councilman Jennings left at 11:50 a. m.

Discussion ensued regarding what needs to go in the code and the city's responsibility, difference between build back and re-development, condominiums have an obligation to confirm the way they are configured. re-development regulations in place up to ownership with redevelopment with possible incentives from City; 2 options buildback regulations as they existed, re-development as exist today, and conform to current regulations.

Mr. Cuyler summed up Mr. Pfalzer's questions for Council:

- ❖ How to deal with non-conforming uses currently prohibited
- ❖ Density
- ❖ Height requirement of 45 feet

Public Comment:

Robin Humphrey spoke to Sundial being individually owned and should make a distinction of an association being residential and form of ownership at Casa Ybel, and Cottage Colony. She spoke to the difference of ownership. She suggested that condominium association should be residential unit.

Stacy Goode spoke to Sundial Association ownership separate than Sundial resort.

#### **Non-conforming Use –**

Mr. Pfalzer stated there were only 2 categories of use:

- ❖ Resort
- ❖ Non-resort

He stated that there were a few commercial development located outside the commercial use districts. He also stated that if there was the need to build back, the dwellings could be built back, but the use would not be permitted. He stated Council might want to look at the 175 units that are non-conforming use outside of the commercial zone. He also spoke to the 500 units within the resort housing district in the Gulf Beach Zone that were forward of the Coastal Construction Control Line (CCCL). He gave the following numbers of non-forming units:

- ❖ 100 units that were not single-family dwellings in the single-family district
- ❖ 5 commercial units non-conforming uses
- ❖ 175 resort uses outside the district
- ❖ 500 units in the Gulf Beach Zone forward of the CCCL
- ❖ 700+ units that could not re-establish their use

Discussion ensued regarding that the elimination of resort use would happen over time, intent of the original Sanibel Plan to have the residential community increased, time share triggered the code to control time sharing, and no resort units have been built on Sanibel in 20 years.

Mr. Pfalzer suggested that Council might want to deal with build back in certain areas and look further at re-development.

Discussion ensued regarding maintaining short term rentals in the EAR, unit size could be a problem when a unit was rebuilt in the same footprint, problem with grandfathering resort housing dwellings, historically the use continued as resort housing when grandfathered in when the code was adopted, board agreed that during buildback only when a building was to be rebuilt it would have the same use, but not during redevelopment, because it would not retain the use, and earlier discussion that would allow a motel/hotel zone.

Mr. Pfalzer spoke to a condominium unit wanted to rebuild and could petition Council to change the use. He stated all references in the code were provided and under buildback the structure would continue to be non-conforming, but redevelopment would bring structures into conformance. Council could consider changing the code to encourage the direction of redevelopment.

Public Comment:

Dave Schuldenfrei spoke to the difficulty of separating use.

Discussion ensued regarding buildings destroyed in the gulf beach zone could not be rebuilt.

Mr. Cuyler stated that from the legal perspective the bundle of rights versus physical rights.

Karen Storijohanan asked for definition of footprint and if the building had to be in the same spot on the property.

Discussion ensued regarding that a building had to be built back in the exact same footprint, if footprint removed the review process would be different and it would be considered re-development, there was something in the code that would give the property owner the ability to move the dwelling to a different place or direction in the same footprint.

Larry Schopp spoke to the session being very helpful.

Discussion ensued regarding separation of pre-disaster resort housing, include commercial properties and define current density, clarification of definitions and categories, future joint meetings, and bring an outline of an ordinance to Council June 21, 2005 Council meeting.

Ms. Zimomra reminded Council and the Planning Commission of the memorial for John Dillon scheduled for May 24, and the June 27<sup>th</sup> joint Council/Planning Commission and Veggie Committee.

There being no further business the meeting was adjourned at 12:46 p. m.

Respectfully submitted by

Pamela Smith, CMC  
City Clerk