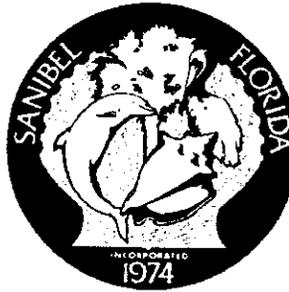


9. **OLD BUSINESS**

c. Planning Commission Reports

- ii. Scheduled update from the Planning Commission regarding Resort Housing District Redevelopment Study (Chairman Mike Valiquette)



**LAND DEVELOPMENT CODE REVIEW COMMITTEE'S
PROGRESS REPORT TO CITY COUNCIL REGARDING THE
RESORT HOUSING DISTRICT REDEVELOPMENT STUDY**

Prepared by:

**THE SANIBEL PLANNING COMMISSION'S
LAND DEVELOPMENT CODE REVIEW COMMITTEE**

Michael Valiquette, Chair
Chris Heidrick, Chuck Kettelman, Tom Krekel,
Phillip Marks, Paul Reynolds and Holly Smith

April 27, 2010

Since receiving the approved March 16, 2010 directions from City Council, the Land Development Code Review Committee (LDCRC), a subcommittee of the Planning Commission, has held two scheduled public meetings with regard to the development of potential legislations intended to regulate the voluntary redevelopment of short term rental properties that are located within the Resort Housing District. These meetings were held on the 13th and 27th of April. This report summarizes discussions and actions taken by the LDCRC to date.

April 13, 2010 Meeting

At the introductory meeting for this study, the Land Development Code Review Committee reviewed the guidelines that were established by City Council as the framework for the Committee to follow. There was general agreement with the direction Council had established for the progression of this study. During the preliminary discussion, the LDCRC reviewed the established scope of the study, which includes density, flood elevation, impervious coverage and developed area, height limits, setbacks and the implementation of green technologies.

During the discussion on density, there were some concerns expressed as to the procedure for allowing a motel, hotel or resort complex to redevelop at its current number of units. If the number of units exceeds the number allowed by the Development Intensity Map, would there be a requirement for approval by referendum. This concern was addressed by the City Attorney and Planning Staff and will be monitored during the drafting of the redevelopment land use regulations.

Additional topics that were touched upon but deferred for later discussion, included average occupancy rate, recreational open space and accessory commercial uses. After hearing public comments, the LDCRC directed staff to prepare a statement of purpose and to draft definitions to cover the variation of redevelopment by the April 27, 2010 committee meeting.

April 27, 2010 Meeting

The LDCRC accepted the preliminary statement of purpose and definitions drafted for inclusion in the land use regulations to be prepared as part of this Study:

Statement of Purpose

It is in both the residential and business community's general interest to preserve a reasonable number of short-term rental (less than 4 consecutive weeks) resort housing units. As a continuation of the adopted (post-disaster) build-back legislation, it is the intent of this Study to examine responsible and well thought-out amendments to the Land Development Code whereby the elective improvement and/or replacement of aging buildings or structures, devoted to short-term occupancy, can take place without the necessity of reducing either the existing number of units, developed in excess of the permitted Development Intensity Map, or the established unit size or habitable floor area (excluding all existing decks, lanais and building access ways dedicated for non-habitable purposes).

To ensure that there is a direct benefit not only to the resort development but also to the broader community it is the intent of this Study to:

- Improve building safety and compliance with applicable Building Code requirements and local, state and federal flood regulations;
- Preserve an appropriate number of daily and weekly short-term rental units that will continue to supply the accommodation needs for tourists and visitors;
- Encourage resort property owners/investors within the Resort Housing District to maintain their hotel/motel use; and
- Establish specific guidelines and standards so that when, and if, redevelopment does occur it can be accomplished in a manner that is consistent with the community's character, enhancement of the beach's carrying capacity and compliance with applicable environmental performance standards of the Sanibel Plan and Land Development Code.

Definitions

- **Redevelopment** - the discretionary act of reconstruction or rehabilitation of aging buildings or structures.
- **Reconstruction** - the demolition and removal of existing buildings and structures that are replaced by new buildings and structures constructed in compliance with all applicable provisions of the Sanibel Plan and Land Development Code currently in effect at the time.
- **Rehabilitation** - the enhancement or updating associated with improving either the physical appearance or condition of an existing building or structure, including their typical components and systems, that when nonconforming will not amount to a substantial improvement.

At the meeting on the 27th there was discussion on the definition of substantial improvement, particularly in terms of the possibility that its application may hamper the concept of rehabilitation since the cumulative cost of improvements cannot exceed 50% of a building's market value for a five year period.

The Land Development Code defines Substantial improvement, in part, to mean any repair, reconstruction, rehabilitation, addition or other improvement, or combination or accumulation of any repair, reconstruction, rehabilitation, addition or other improvement of a structure, taking place since February 16, 1988, in which the cumulative cost of the improvements equals or exceeds 50 percent of the market value of the structure at the time of the application. It was generally accepted, by the LDCRC, that the definition for substantial improvement should be upheld, as the definition only applies to those buildings that are nonconforming with the required base flood elevation established by FEMA.

Conclusion

The Land Development Code Review Committee's next public meeting will be on May 11, 2010.



City of Sanibel

Planning Department
STAFF REPORT

Land Development Code Review Committee: April 8, 2010
Agenda Item: 4
Application Numbers:
Applicant Name: City of Sanibel

RE: The Land Development Code Review Committee's Work Plan for Developing Potential LDC Amendments Specific to the Redevelopment of Established Short-term Occupancy Properties Located within the Resort Housing District

INTRODUCTION TO THE RESORT REDEVELOPMENT STUDY

Short-term housing accommodations, such as cottages, hotels and motels, have long been an integral part of the Sanibel vacation experience. Not only do short term occupancy developments provide an important and vital contribution to the local business economy they are often the lodging places where first time tourists are likely to vacation.

A major concern with the typical Sanibel short-term occupancy development is that the existing buildings, ancillary structures and facilities have become dated in terms of physical age and functional obsolescence. Because many of these developments are nonconforming they are further restricted by various zoning regulations that prohibits such nonconforming uses and/or structures from ever being enlarged, expanded or intensified particularly when the use is a use not permitted in the district in which it is located or where a structure is nonconforming due to permitted residential density, setbacks, flood elevation, impervious coverage, developed area or vegetation removal.

When the City's Build-back Ordinance was adopted it was generally recognized that a property owner should not suffer the loss of a dwelling unit or a reduction in unit size as the result of a natural disaster or that even a nonconforming use could be reestablished if the building they occupy was built back after a natural disaster

This work plan for the consideration of redevelopment legislation will take a direction similar to that of the Build-back Ordinance. This report will address the framework

that has been established by City Council and will examine the key challenges associated with current land use regulations of the Land Development Code and provisions of the Sanibel Plan.

BACKGROUND INFORMATION

Between January and March 2010 City Council held a series of discussions regarding the direction for the Land Development Code Review Subcommittee to take during the Resort Redevelopment Study to develop potential amendments to the Land Development Code that will allow for short-term occupancy developments to be redeveloped and maintain their existing density even if it the development exceeds the permit residential density. This consideration, however, would be limited solely to those short-term occupancy developments located within the Resort Housing District, that plan to retain their short-term rental status of less than 28 consecutive days stays and in doing so complies with all applicable zoning requirements of the Land Development Code including, but not limited to, flood, height, setbacks, impervious coverage, developed area and vegetation removal and the Sanibel Plan.

Memorandums prepared by the Planning Department for the City Council discussions of this work plan are attached to this report

PURPOSE OF RESORT REDEVELOPMENT STUDY

The purpose of the redevelopment study is to establish potential legislation that will allow short-term occupancy developments located within the Resort Housing District to carryout certain improvements or replace aging buildings and structures. The development of such legislation will not only improve building safety with respect to applicable Building Code requirements and flood regulations but will also preserve a sustainable block of daily and weekly rental units within the City.

For this discussion redevelopment will be defined as the complete removal of all structures from a site and the reconstruction of permitted buildings and accessory structures in accordance with the Land Development Code and Sanibel Plan.

As a further consideration Staff suggests that for this discussion there be a definition of rehabilitation. Rehabilitation would include the enlargement, reconfiguration or alteration of an existing permitted building or accessory structure within its existing footprint and three dimensional outline as is currently permitted by the Land Development Code.

In addition, any planned redevelopment project should also be required to enhance the on-site surface water management and treatment, as well as, to restore the Gulf Beach (Preservation) Zone to a level where it functions as a contiguous and intact habitat.

SCOPE OF THE RESORT REDEVELOPMENT STUDY

To preserve the current block of daily and weekly short term occupancy units this study will focus solely on those existing hotel, motels and condominiums that are located within the Resort Housing District. In the development of regulations specific to redevelopment City Council has set the following parameters for this study.

1. Density

Sanibel Plan, Section 3.6.2 Land Use, Resort Housing states,

“A motel, hotel or resort complex can build-back the existing number of units if the buildings are substantially damaged by a natural disaster. Perhaps a motel, hotel or resort complex should be allowed, with appropriate restrictions, to redevelop up the existing number of units, if the number of units exceeds the number allowed by the Development Intensity Map.”

Land Development Code Section 3.10.2. Ordinance increasing residential development intensity states,

“Actions to increase the residential development density as established in the Sanibel Plan, as constituted on May 4, 2004, except for rounding upward of fractional allocations of fifty percent (50%) or more to the next whole number, may be taken by the city only by ordinance approved by a majority of the qualified city electors voting at the next general election or a special election called for such purpose; provided, however, that nothing contained in this Section 3.10.2 shall preclude the city council from permitting residential densities in excess of those established in the Sanibel Plan, where the purpose is 1) to provide incentives for the Below Market Rate Housing Program, or **2) to permit redevelopment of existing parcels up to the number of existing dwelling units on May 4, 2004, provided the redevelopment is otherwise in conformance with the Sanibel Plan and the Land Development Code**”.

Under redevelopment a short-term occupancy development could maintain its existing number of units that exceeds the number of units permitted by the Development Intensity Map provided the proposed redevelopment conforms to the Sanibel Plan and Land Development. It should be noted that this is not an increase in density per se but an option under redevelopment to maintain the current nonconforming density provided the development continues to operate as a short-term occupancy use and is redeveloped in compliance with the Sanibel Plan and all applicable zoning requirements of the Land Development Code including, but not limited to, flood, height, setbacks, impervious coverage, developed area and vegetation removal.

2. Impervious Coverage, Developed Area and Vegetation Removal

The importance of limiting the amount of impervious coverage, developed area

and vegetation removal on a property is recognized throughout the Sanibel Plan and Land Development Code. The amount of permitted coverage and developed area on a parcel of land is directly related to the volume of on-site storm water management, water quality and the ability to treat polluted water on site and the amount of quality open space required for scenic preservation and wildlife habitat.

The direction City Council has given here is there shall be no increase in the permitted coverage, developed area and vegetation removal provisions of the Sanibel Plan and Land Development Code.

3. Height Limit

In the past, multi-family buildings developed within the Resort Housing District were provided relief to the maximum height limit of 45 feet NGVD (i.e., 43.8 feet NAVD) in order to accommodate the construction of three habitable floors above the required base flood elevation.

Land Development Code Section 126-635 (4), states that, principal residential buildings shall be permitted to exceed 45 feet above mean sea level only where both of the following circumstances exist:

- a. The buildings are located, in whole or in part, seaward of the coastal construction control line as established by the state department of environmental protection in 1991; and
- b. The flood elevation required by the Florida Building Code is higher than the base flood elevation required by the city.

In such case, the buildings shall be permitted to exceed 45 feet mean sea level by no more than the amount by which the flood elevation required by the Florida Building Code exceeds the base flood elevation required by the city's adopted Flood Insurance Rate Map”.

Up until the adoption of the higher base flood elevations, implemented by FEMA's 2008 Federal Flood Insurance Rate Maps, the above exemptions are less effective as the distance differential between the required Florida Building Code and that of the Federal flood elevation has been reduced. Having said this the direction City Council has given with regards to this matter is that there shall be no increase in the maximum height limit provisions of the Sanibel Plan and Land Development Code.

4. Setbacks

The requirement for having proper building setbacks helps to ensure air circulation and access to natural light as well as provide for the installation of

landscaping and to maintain and protect adjacent natural ecosystem and wildlife habitat.

Under the direction that City Council has given where there are existing buildings and structures within the Gulf Beach Ecological Zone (i.e., seaward of the 1974 Coastal Construction Control Line) or encroachments into the required front yard or side yard setback these nonconformities would cease to exist once a resort housing property is redeveloped.

5. Green Technologies

In general, the implementation and use of green technologies should be strongly encouraged and supported in conjunction with the redevelopment of short-term rental resort housing, but not as a means of increasing impervious coverage, developed area or vegetation removal.

6. Additional Development Regulations to Consider

If the redevelopment of short-term occupancy developments are permitted to retain the existing number of units (or allow to redevelop to a number of units that exceeds the permitted density indicated on the Development Intensity Map), there is an associated need to adjust Land Development Code regulations pertaining to:

- Average (Presumed) Occupancy Rate Requirements [LDC Section 86-71],
- Recreational Open Space Requirements [LDC Section 126-635(1)] and
- Resort Housing Accessory Commercial Uses [LDC Section 126-83] and applicable conditional use requirements.
- **See all applicable sections below.**

Land Development Code Section 86-71. Average occupancy rate, states the following:

(a) For purposes of this Land Development Code, dwelling units of the following types and sizes shall be presumed to have average occupancy rates as indicated in the following table:

TABLE INSET:

Type of Dwelling Unit	Presumed Average Occupancy Rate
Units of resort housing uses:	
One-bedroom units	2.5 individuals per unit
Two-bedroom units	3.5 individuals per unit
Three-bedroom units	4.25 individuals per unit
Four-bedroom units	5.0 individuals per unit
Nonresort housing units	2.2 individuals per unit

(b) One-bedroom units exceeding 600 square feet of floor areas shall be treated as having an additional bedroom and shall be subject to the higher presumed average occupancy rate.

(c) For purposes of this section, a bedroom is a room or area designated as a "bedroom" on development or building plans, or a room or area which, in the opinion of the city manager or his designee, is designed and located so as to be used for sleeping purposes and is capable of being closed off from main living areas.

(d) A developer who believes that a dwelling unit or units has or will have an occupancy rate that is lower than the rate shown in subsections (a) or (b) of this section, may present evidence relating thereto in connection with any application for a development permit. If it is found by the Planning Commission that a lower average occupancy rate is likely to occur, and that the conditions causing such a lower rate cannot be changed without approval of the city, then the density may be based on the specific average occupancy rate determined to be appropriate, which shall be set forth in the development permit. However, in no case shall the Planning Commission presume an average occupancy rate of fewer than 2.2 individuals per unit.

(e) When a development is located in the resort housing district, all units shall be deemed to be resort housing except those as to which the developer records on the public records of the county effective condominium documents, cooperative documents, restrictive covenants, or other forms of covenant running with the land, containing substantially the following provision.

(f) No dwelling unit or part thereof, located on land subject to these restrictions, may be rented for a term of less than four consecutive weeks or converted to timeshare estates for periods of less than four consecutive weeks. This limitation may be enforced by the city and shall not be amended, revoked, or otherwise terminated without the express written consent of the city, any other provision of this Land Development Code notwithstanding.

Sec. 126-635. Development regulations.

Lands in the resort housing district shall be subject to all of the regulations for the zone district in which they are otherwise located. Use of such lands in the resort housing district shall be subject to all conditions, limitations, and regulations contained in this Land Development Code, the same as if such lands were not included in the resort housing district. In addition, the following requirements shall apply to all lands within the resort housing district:

- (1) Because of the additional demands for recreational facilities created by short term tenants, any development which is to be used as resort housing must have, upon the same parcel on which such use is located, at least 7,500 square feet of recreational open space for each dwelling unit. Such recreational open space shall be set aside for, and be used by, the occupants of such units. Such recreational open space shall be utilized in accordance with a plan approved in connection with the issuance of a development permit or as a condition of a development permit. Such plan shall detail the manner in which the recreational open space is to be utilized and may include both active and passive recreation, but may not include motorized sports.

Sec. 126-83. Resort housing accessory commercial uses.

Resort housing accessory commercial uses shall be permitted as a conditional use subject to the following conditions set forth in this section:

- (1) The development must contain 25 or more dwelling units.
- (2) Access to the accessory use shall only be from within the development and not from any abutting street or public way.
- (3) All of the dwelling units in the development must either be under common ownership or be approved under one development permit which unites the lands upon which the dwelling units and accessory use are located as a single lot and as to which effective restrictive covenants are recorded on the public records of the county which perpetuates the right of dwelling unit owners, tenants and guests to use such accessory commercial use.
- (4) Resort housing accessory commercial uses must either be limited to the exclusive use of the owners, tenants and guests of the resort housing dwelling units or else provide additional parking on the site equivalent to one-half the number of parking spaces which would be required of a similar commercial use in a commercial district.
- (5) The resort housing accessory commercial use may be no larger than the applicant can demonstrate is reasonably necessary to serve the needs of the owners, tenants and guests of the resort housing dwelling units.
- (6) Resort housing accessory commercial uses shall be limited to restaurants, recreational lessons and nonmotorized equipment rentals, retail sales of recreational equipment (other than vehicles, boats, and motorized equipment) used in conjunction with activities available on the site, retail sales of food items and sundries (utilizing no more than 200 square feet of floor area for any resort housing development, restricted real estate sales and rental offices and vending machines).

- (7) In the case of real estate sales and rental offices, use shall be restricted to sale and rental of whole ownership and timeshare units located on the site, and not for off-site sales and rentals. In addition, the following restrictions shall apply:
- a. Hours of operation shall be limited to 9:00 a.m. to 6:00 p.m. daily.
 - b. No additional on-site parking shall be required.
 - c. Permanent street graphics and temporary "open house" signs advertising the sales activity are expressly prohibited.
 - d. A fully executed resolution from the board of directors of the respective condominium association or other governing body setting forth the consent and authority for the establishment of the on-site sales and rental office shall be submitted with an application for the conditional use.
 - e. Only one on-site sales or rental office may be authorized for each separate resort use.
 - f. The for sale inventory shall consist of a minimum annual average of five percent of the total number of whole ownership or timeshare units at a given resort property in order to continue the sales office use. The respective board of directors shall provide to the city an annual accounting of the for sale inventory, with the year commencing on the date a development permit is issued for the use.
 - g. The use must be conducted within a completely enclosed building.

Process

To be certain to maintain open lines of communication Council would like to receive a detailed progress report every other month from the Planning Commission.

MINUTES FOR APRIL 13, 2010
MEETING OF THE
LAND DEVELOPMENT CODE REVIEW SUBCOMMITTEE
THE COUNCIL CHAMBERS (MAC KENZIE HALL)
800 DUNLOP ROAD, SANIBEL, FLORIDA

Chair Valiquette called the meeting to order at 9:01 A.M. In addition to the Chair the following were present: Commissioners Chris Heidrick, Chuck Kettelman, Phillip Marks, Paul Reynolds and Holly Smith. Staff present: City Attorney, Ken Cuyler; Planning Director, James Jordan and Administrative Assistant, Susan Beck. Councilman Jennings attended as City Council Liaison. Approximately 14 members of the public attended.

Commissioner Krekel was excused from the meeting.

2. **The meeting began with the Pledge of Allegiance.**
3. **Approval of the March 9, 2010 Land Development Code Review Subcommittee meeting Minutes.**

MOTION: Commissioner Reynolds moved to approve the minutes as submitted; Commissioner Marks seconded the motion. The motion carried by a unanimous voice vote.

4. **Discussion of Redevelopment in the Resort Housing District in Preparation of Appropriate Land Use Regulations for City Council's Consideration**

Mr. Jordan introduced the topic and stated that the March 17, 2010 memo from Mayor Denham and the April 8, 2010 Planning Department Staff Report were included in the meeting packet.

The Scope of the Study will focus on the short-term rental of Resort Housing within the Resort Housing District. The goals of the Study are to allow voluntary redevelopment to maintain but not to increase density and to provide proposed regulations from the Committee and Planning Commission to City Council. In the Staff Report it states that the Sanibel Plan notes that hotels and motels should be allowed to redevelop, with the appropriate restrictions, up to the existing number of units, if the number of units exceeds the number allowed by density.

Land Development Code Section 3.10.2. Ordinance increasing residential development intensity states, "Actions to increase the residential development density as established in the Sanibel Plan, as constituted on May 4, 2004, except for rounding upward of fractional allocations of fifty percent (50%) or more to the next whole number, may be taken by the city only by ordinance approved by a majority of the qualified city electors voting at the next general election or a special election called for such purpose; provided, however, that nothing contained in this Section 3.10.2 shall preclude the city council from permitting residential densities in excess of those established in the Sanibel Plan, where the purpose is 1) to provide incentives for the Below Market Rate Housing Program, or 2) to permit redevelopment of existing parcels up to the number of existing dwelling units on May 4, 2004, provided the redevelopment is otherwise in conformance with the Sanibel Plan and the Land Development Code".

Mr. Jordan reviewed sections of the Sanibel Plan and the Land Development Code (LDC) and stated that part of the Study that the Land Development Code Review Subcommittee (LDCRS) would be looking at is established density, provided that short-term rentals are maintained and comply with the Sanibel Plan and the LDC.

Impervious Coverage, Developed Area and Vegetation Removal

Council directed that, as currently required by the LDC and Sanibel Plan, there would not be an increase in impervious coverage, developed area or vegetation removal.

Height Limit

Council directed that the height limit would remain 45' NGVD or 43.8' NAVD.

The Florida Building Code has a higher flood elevation code than the FEMA elevation. The Code allows for the adjustment between these two elevations to be placed on top of the building so three floors can be maintained. There may be issues regarding building three habitable floors under the current provisions of the LDC. City Council said to hold to the maximum 45' height.

Setbacks

Council made it clear that any existing buildings and structures seaward of the 1974 CCCL or encroachments into the required front or side yard setback would cease to exist once a resort housing property is redeveloped.

Green Technologies

Council strongly encourages that the implementation and use of green technologies be used and supported in conjunction with the redevelopment of short-term rental resort housing, but not as a means to increase impervious coverage, developed area or vegetation removal.

Additional Development Regulations to Consider

If the redevelopment of short-term occupancy developments is permitted to retain the existing number of units (or allowed to redevelop to a number of units that exceeds the permitted density indicated on the Development Intensity Map), there are associated needs to adjust LDC regulations pertaining to:

1. Average (Presumed) Occupancy Rate Requirements (LDC Section 86-71) & (2) Recreational Open Space Requirements (LDC Section 126-635(1)). This functions as a way to decrease density because the more units you have, based on the size of the units, the number of units would need to be reduced. Most of the developments will be dealing with densities greater than 5 units/acre. There may not be a method for them to comply with the open space or the average rate of occupancy. This report doesn't address this concern. Perhaps we can look at a provision to be incorporated into the current Code that would allow, under redevelopment, a greater number of units than those permitted by the residential density/development intensity map to be built back but to also require that at least under redevelopment those properties demonstrate that they can comply with the open recreational space requirements for 5 units/acre.
2. Resort Housing Accessory Commercial Uses (LDC Section 126-83) and applicable conditional use requirements. Under the Code, Conditional Uses, stipulates that you can have various commercial development for resort housing provided the commercial use only serves the guests, residents and visitors at that development. This will need to be addressed during future discussions.

Process

City Council requested an open communication between the LDCRS and Council and a report to City Council every two months. Chair Valiquette asked if the report would be presented by the Planning Commission Liaison or by the Committee Chair. Mr. Jordan said the message should be consistent and suggested that there be one lead person and possibly an alternate to represent the Committee; however, this would be decided by the Committee.

Chair Valiquette said he would ask for Committee comments, public comments and then develop a process for going forward.

Chair Valiquette

1. Assumed the Resort Housing District and all changes include condos and rental resorts. Mr. Jordan said this is true.
2. Regarding density – A nonconforming resort can rebuild with the same coverage; if this increases density under the existing Code, would this require a vote from the electorate. Mr. Jordan stated this is true but he would ask Attorney Cuyler to comment further. Attorney Cuyler asked if Chair Valiquette said if the condominium builds back to the existing density.
3. If a resort has more units than are allowed today and they want to rebuild under Redevelopment, will they be restricted by the current Code? Attorney Cuyler said that under Build Back, due to a natural disaster, the resort can rebuild within the existing three-dimensional outline of the building of the units that are on the ground now. Presently, under Redevelopment the charter provision says there is an electorate vote approval requirement for an increase in density. There are two exceptions; (1) Below Market Rate Housing and (2) when the existing density is built back in compliance with the Plan and the Code. This would have to be approved by Council but doesn't take the additional step of the electorate approval. Attorney Cuyler also stated he has a concern as to how many of these projects can be rebuilt in compliance with the Plan and the Code. Until other regulations are developed he believes there would be an electorate approval. If there is a way to develop provisions and individual properties can comply with existing Plan and Code requirements, there may not be an electorate approval requirement.
4. What is the cost of an electorate vote? Attorney Cuyler said he believes if an electorate approval is necessary the City would want to do this in a single action rather than development by development. This would be paid for by each development not by the City.
5. This will discourage redevelopment. This Committee would need to find recommendations to remedy this. Attorney Cuyler stated that if the development complies with the Code and Plan there isn't a need for a vote.
6. The report received from Council clarifies the differences between condominiums and rental resorts. Is there a list available of nonconforming properties in the District? Mr. Jordan said a list is included in the meeting packet.

Commissioner Marks

1. Believes the topic is off to a good start with Council's guidance and Mr. Jordan's summary.
2. Hopefully this will streamline the process.
3. Referred to Page 2 of the staff report "Rehabilitation would include the enlargement, reconfiguration or alteration of an existing permitted building or accessory structure . . ." and asked how you would enlarge something if you can't change the footprint and the three dimensions. Mr. Jordan said to strike out the word enlargement but say you could reconfigure, alter and modify a structure within its three-dimensional outline.
4. Some homes are more open. Mr. Jordan stated the rooms could be larger but within the footprint.

5. You could use the word enlargement because you are changing the size of a room in the interior configuration but the footprint would stay the same.

Commissioner Heidrick

1. The tables included in the report are helpful to identify properties with specific challenges.
2. What he doesn't know is how configurable each property is.
3. Is concerned that some properties won't be able to do anything and asked if there is a way to identify these properties. Mr. Jordan said it would be very difficult to do an analysis on each parcel; every parcel will be different and some properties will choose not to redevelop. It may not be feasible for some properties to redevelop even with provisions for setbacks, heights, etc.

Commissioner Marks

1. We will look at a spectrum.
2. Some will want to change configuration but others may want to modernize, i.e., more secure roof, interior work or green up the property.
3. Some will have more options than others.

Commissioner Heidrick

1. Would an applicant need a variance for a non-conformance? Presently there are strict criteria, one criterion being that a hardship cannot be created by the applicant. Someone could make an argument that the hardship is created by the applicant but some could say this isn't a hardship created by the applicant because the Code has changed since the property was first built. Mr. Jordan said as the study progresses these issues will be addressed. Some properties may qualify for a variance; each application is different and must stand on its own merits. We need to remember that a variance cannot be granted for a use that is not permitted in a particular district.

Chair Valiquette

1. If City Council approves changes to the Code to allow Redevelopment would a variance be required. Commissioner Marks stated this is the reason we are doing this.

Mr. Jordan said he believed Commissioner Heidrick was talking about rehabilitation rather than redevelopment. This study will look at both of these issues. Commissioner Heidrick said he wasn't trying to be specific. It will be difficult to write a standard that will address all issues for each individual property; at some point we will have to discuss how we will handle variances.

Commissioner Smith

1. There are two issues to deal with; (1) Build Back regarding a disaster and (2) Redevelopment or Modernization not due to a natural disaster.
2. In Build Back can the structures be built back as they are today? This is a huge issue for nonconforming properties.
3. Redevelopment needs to be looked at differently because (1) this is what we have now and (2) how we will address what property owners can do now.
4. Council wants Build Back and Redevelopment to be together but Commissioner Smith sees them as being separate.
5. A variance may not be necessary for Build Back.
6. In Build Back a structure can be rebuilt after a disaster to its original size, etc. Attorney Cuyler stated this is correct. If they are nonconforming with regard to a setback they can build back as nonconforming to the setback because they are required to build back to the same footprint. Council

felt this was such a large issue that Build Back needed to be addressed and in place and later, if people wanted to voluntarily redevelop, rules would be established for Redevelopment. Build Back is set, the regulations are in place.

7. Are we considering properties outside the Resort Housing District?
8. We need to identify what is going to be included in this process.
9. Are we including only the ones that are nonconforming within the Resort Housing District or are we also including the nonconforming resort units located outside the Resort Housing District? Mr. Jordan stated that City Council limited this study to nonconforming resorts within the Resort Housing District and purposely decided not to include any of those outside this District at this time.
10. Believes this will come back quickly to the Planning Commission because these properties are facing the same thing. Attorney Cuyler said that unless City Council changes its direction to the Planning Commission these are outside the scope of what is being addressed. Attorney Cuyler stated if the Commission believes this is important they can ask Council if they want to reconsider the issue. Chair Valiquette said this happened with outdoor dining and it had to come back to the Planning Commission several times.

Chair Valiquette

1. Asked Mayor Denham to come to the podium and address this issue. Attorney Cuyler stated that one issue is that some of the motel units are in the middle of residential districts and there will be different issues. Mr. Jordan stated the thought is that these units will be looked at later so this process is not bogged down. There is more than one issue, i.e., the issue of nonconformity regarding density; there is also an issue of nonconforming uses because they are outside the district.

Commissioner Smith

1. Aren't we doing this for nonconforming uses within the District?
2. Whatever Council wants is the direction we will take.
3. This isn't the right thing to do. There are only 165 nonconforming resort units in 24 developments and something could happen during the storm season and these owners won't have an answer. Mr. Jordan said these properties are covered under Build Back regulations. Redevelopment needs to be separate from Build Back.

Commissioner Heidrick

1. This approach allows us to focus on redevelopment issues and not get bogged down on unique issues for a specific property outside the Resort District.

Commissioner Reynolds

1. Is skeptical because he has never seen such unfortunate consequences with government tinkering with systems.
2. Referred to the Sanibel Center and who needed to be saved and protected and who didn't need to be there.
3. Just recently there was an attempt to define uses for the Nave property but nothing was decided.
4. Asked if it is a function of government to decide that short-term rentals are necessary to the well being of the City of Sanibel or should the market decide.
5. Do the people who own these properties need to have an incentive to develop the properties or should the market decide this?
6. If my property is deteriorating, hopefully I am going to do what is necessary administratively to change this.
7. Doesn't believe there is some magic bullet that will solve this issue.

8. Feels individual projects won't be looked at but that an appeal process will be developed that expedites the opportunity for individual properties to state their case.
9. This seems like we are looking at some type of blanket resolution and there isn't one.

Attorney Cuyler stated that this is one of the things that the Committee will struggle with in developing the regulations. The discussion has been broad and the recognition is that all properties are different and may be looking for different things. It is the Committee's job to take overall regulations and make them work on an individual basis.

Commissioner Kettelman

1. Agreed with some of Commissioner Reynolds' concerns.
2. Wants information from the resorts about what they feel they need to do.
3. A very substantive part of our work should be listening to the resorts telling us about the problems they face, how they look at the market and what changes they think need to be made.
4. Not that the Committee will agree with everything but they will have a better understanding.
5. This would help the Committee understand what changes are needed for variances, regulations, etc.
6. While reading the Staff Report and City Council's document he saw inconsistencies and different conclusions.
7. On Page 5 of the staff report "Under the direction that City Council has given" – this is dealing with encroachments and setbacks – believes this means that whatever changes we make we should be sure that whatever setback or other related nonconformities that exist today would go away. Mr. Jordan agreed this is what that paragraph says.
8. Earlier it was stated that City Council thinks it is OK to redevelop within the existing footprint.
9. If the current footprint has setback nonconformities and they are allowed to redevelop within the current footprint how can they get rid of the setback nonconformity. Mr. Jordan stated that under Build Back you could build within the same footprint or location but the structure would have to be elevated if it was nonconforming with regard to flood. Under Redevelopment you are talking about raising the site and starting from scratch.
10. When we are talking about the existing footprint we don't necessarily mean within four walls; we are talking about the number of units. Mr. Jordan said this is correct; we are talking about the number of units and the square footage of habitable space. It may be under redevelopment that a certain property in order to comply might have to reduce the number of dwelling units and also square footage.
11. Regarding green technologies – what if we can prove during our deliberations that some extended impervious coverage is beneficial. Do we need to go to Council and tell them that we think they are wrong and this is the rule we think is needed. Chair Valiquette said the Planning Commission doesn't necessarily tell Council they are wrong but any LDC change always goes to Council for approval. If we do something that Council said they didn't want you can almost guarantee that it will come back to the Planning Commission or Council will just change it.
12. We would have to have a very good argument. Chair Valiquette said it would take a majority of the Commission to agree to send it back to Council.

Commissioner Heidrick

1. The bi-monthly open dialogue with Council should solve this issue.

Chair Valiquette

1. We need to stay away from the Build Back issue, this has been solved.
2. It was recommended that existing buildings register with the City.

Commissioner Reynolds

1. Agreed with Commissioner Ketteman that stakeholders should come forward and state their needs.

Commissioner Smith

1. Stated that she asked Mr. Jordan if individual properties that are affected would be notified of the meetings and was told they would not be. Mr. Jordan stated that the Planning Department is not making any special notifications other than the newspaper notices, the City's web site and e-mail distribution. Chair Valiquette stated that Sonja Smith representing CASI would make sure the proper people are notified. It isn't the City's responsibility to spend tax payer dollars to notify each individual property.
2. Notification could be sent to each board and not to individual owners.

Commissioner Ketteman

1. We could make a mistake deciding who to send a notice to so if you send notices you would have to send them to everyone. Attorney Cuyler said an advantage is that this issue will be worked on for several months; it won't be just one hearing.

Commissioner Smith

1. The tables included in today's meeting packet outline what is conforming and nonconforming.

Commissioner Marks

1. Green building technology should be used because someone wants to save energy, decrease the carbon footprint or use sustainable materials not because they are trying to get more space. This isn't a quid pro quo arrangement; there should not be some implicit reward.
2. When CASI was able to increase space for recycling and bicycle racks this was not just giving them extra space.
3. CHR didn't get any extra space for the project on Main Street but they used as many green techniques as they could.

Chair Valiquette

1. The Green Building Association looks at many different products, A/C, solar, etc.
2. Does not agree with recycling plastic and making it into wood because the wood will eventually be torn down.

Commissioner Reynolds

1. If we only accomplish stormwater management, we will have done something good.

Chair Valiquette

1. After this meeting Chair Valiquette is going to meet with the Environmental Protection Agency to talk about what went wrong with the "Clean Water Act" that was put in place 12 years ago.

Public Comment

Herb Rubin, Sanibel citizen, is concerned about terminology. He made comments a month ago and now a new word has entered the vocabulary. There are now five words that need to be distinguished; (1) update; (2) modernize; (3) improve; (4) rehabilitate and (5) renovate. The Planning Department has included a definition of rehabilitate but it is assumed that all these terms are under the major heading of Redevelopment. Mr. Rubin said that Mr. Jordan said Redevelopment is equivalent to raising a structure

and Mr. Rubin doesn't think this is true. Mr. Rubin pleaded with the Planning Department to (1) identify which terms will be used and (2) use the terms consistently. In regard to Commissioners Reynolds' and Kettelman's concerns about how much the City should be involved, we have the City, County, SCCF and the State all making the Island what it is, which is 70% preserved land. This considerably reduces the tax base. The City government must be responsible for providing help to the industries so they can survive and provide the residents with the services they need. Regarding notification, Mr. Rubin would not want someone, in the future, to say we didn't have enough public input. Mr. Rubin urged that every board be informed of the meetings and encouraged to attend.

Karen Storjohann, Sanibel resident, is perplexed to see Redevelopment and Build Back merged when they were touted as being separate. The documents for today's meeting seem to be merging the two. The State would weigh in on Redevelopment if a property did not have enough footage to set it back from the water or if the square was in front of the CCCL. We are losing sight on the fact that with the increase of off-Island resort properties the overall number of potential rental places has tremendously increased. Only resorts of higher quality can command higher prices. Rental prices had been reduced; this has resulted in a reduced bed tax. It is not just the quantity of rental units but the quality that should be the considered.

Chair Valiquette stated that Build Back and Redevelopment are similar issues; they are not being merged.

Sonja Smith, CASI, stated there is a two-word phrase in the LDC that upsets CASI. This phrase is in Section 126.172 – Improvements Prohibited. It refers to nonconforming structures, not use, and there is a list of six exceptions; one is seawalls, one in build back and one in repairs. There are three ways that condominiums can improve. This is insufficient to provide quality upgrades. Ms. Smith stated that CASI members would be encouraged to attend these meetings. A position paper was issued in May outlining things that are needed, i.e., systems. The condos are 20 to 40 years old and systems are obsolete. Condos are governed by many regulatory bodies and CASI has to work with everyone to make things happen. Architecturally the condos need to do some modernization. Ms. Smith explained that CASI was formed about 34 years ago and is a consortium of mostly condo associations, about 93 associations that represent 3300 property owners. Their main mission is to share information and to provide a platform for issues. Some issues are unified but some issues are specific to an individual condominium.

There were no further public comments.

Chair Valiquette asked Mr. Jordan how staff would like to proceed.

Mr. Jordan suggested that the committee select certain areas for discussion beginning with density and pervious coverage. All six items would be covered during the next two months. Mr. Jordan also stated that the Committee's next meeting would be on April 27, 2010 at 8 A.M. Chair Valiquette asked if the meeting would be noticed in the newspaper including each issue. Mr. Jordan suggested that the committee make a list of the issues involved in each topic and then prioritize the issues.

Commissioner Smith said when the Committee was working on 86-43 Council felt there should be a mission statement. This statement would clarify the direction of discussions. Commissioner Smith agreed with Mr. Rubin that there needed to be consistency and a statement of what is being done. Mr. Jordan said this has been done by Council. The Committee would use this same statement as a header to each of the discussions.

Commissioner Marks said we are off to a good start. The Committee has guidance from Council and there will be reports presented to Council according to a specific schedule. Commissioner Marks requested that a copy of the minutes from every meeting be sent to each Council member.

Commissioner Kettelman suggested (1) that we take a look at the purpose statement from City Council to make sure that we are all clear and agree on the definition for terms being used just as Mr. Rubin talked about during Public Comments; (2) breaking this into issues does suppose that we have received enough information from the resort and condo owners to know what they need. Commissioner Kettelman suggested that a meeting be held to listen to condo and resort owners and get the facts about what they believe is needed. There may be additional issues that the Committee isn't aware of. Mr. Jordan said he would supply the committee with a list of words and definitions. Commissioner Kettelman said we haven't heard from any resorts and we think we know what six issues are.

There being no further business, Chair Valiquette adjourned the meeting at 10:07 A.M.

Respectfully submitted,


Michael Valiquette
Chairman



City of Sanibel

Planning Department
STAFF REPORT

Land Development Code Review Committee: April 27, 2010
Agenda Item: 3
Applicant Name: City of Sanibel

REDEVELOPMENT STUDY FOR THE RESORT HOUSING DISTRICT

A. Statement of Purpose

It is in both the community and businesses general interest to preserve a reasonable number of short-term rental (less than 4 consecutive weeks) resort housing units. As a continuation of the adopted (post-disaster) build-back legislation, it is the intent of this Study to examine responsible and well thought-out amendments to the Land Development Code whereby the elective improvement and/or replacement of aging buildings or structures, devoted to short-term occupancy, can take place without the necessity of reducing either the existing number of units developed in excess of the permitted development intensity map or the established unit size or habitable floor area (excluding all existing decks, lanais and building access ways dedicated for non-habitable purposes).

To ensure that there is a direct benefit not only to the resort development but also to the community it is the intent of this study to:

- Improve building safety and compliance with applicable Building Code requirements and flood regulations;
- Preserve a manageable and viable number of daily and weekly short-term rental units that will continue to supply the accommodation needs for tourists and visitors;
- Encourage those resort property owners/investors within the District to maintain their hotel/motel use; and
- Establish specific guidelines and standards so that when, and if, redevelopment does occur it can be accomplished in a manner that is consistent with the community's character, enhancement of the beach carrying capacity and applicable environmental performance standards of the Sanibel Plan and Land Development Code.

B. Proposed Definitions

Should the following definitions or other suggested terminology by the Land Development Code Review Committee be adopted for application in the discussion of this Study?

- **Redevelopment** - the discretionary act of reconstruction or rehabilitation of aging buildings or structures.
- **Reconstruction** - the demolition and removal of existing buildings and structures that are replaced by new buildings and structures constructed in compliance with all applicable provisions of the Sanibel Plan and Land Development Code currently in effect at the time.
- **Rehabilitation** - the enhancements or updating associated with improving either the physical appearance or condition of existing buildings or structures that when nonconforming do not amount to a substantial improvement.

C. Exception to the Improvement or Expansion of Buildings or Structures Devoted to a Nonconforming Uses

Should resort housing developments within the Resort Housing District be allowed to enlarge, alter or replace their lawfully existing buildings or structures that are devoted to a nonconforming use under this redevelopment study?

Currently, under the Land Development Code any lawfully existing nonconforming use of a structure, or of a structure and land in combination can be maintained until the use is removed, built-back after a natural disaster or redeveloped to a use permitted in the district in which it is located.

Nonconforming use means a lawfully-established use located in a zone district restricted against such use. Other than elevated beach dune walkovers, all lawfully existing buildings or structures that are located seaward of the State's 1974 Coastal Construction Control Line are considered nonconforming uses.

Land Development Code, Chapter 126 Zoning, Article 5. Nonconformance, states, in part, that a lawfully existing nonconforming use of a structure, or of a structure and land in combination, that would not be allowed in the district in which it is located, may continue and even built-back under the adopted build-back ordinance if the structure itself is substantially damaged by a natural disaster. Also under this Article a lawfully existing structure devoted to a nonconforming use can be altered within its existing perimeter, i.e., three-dimensional outline, provided that in conjunction with previous repairs or alterations the cumulative cost does not amount to a substantial improvement, as defined in Chapter 94. Floods.

With the exception for the building-back of buildings and structures that are substantially damaged by a natural disaster, this study shall reaffirm and continue the

City's policy to prohibit new development, including redevelopment, seaward of the 1974 Coastal Construction Control Line.

Under this study for redevelopment there are no anticipated changes, or recommendations by staff, to amend the Land Development Code, in any way, to permit the alteration or expansion of a lawfully existing building or structure devoted to a nonconforming use. It is, however, strongly suggested that under reconstruction all lawfully existing buildings and structures devoted to a nonconforming use shall retreat from the Gulf Beach Zone, where such uses are prohibited and relocate to an area landward of the State's 1974 CCCL where the use of such buildings or structures is permitted. In addition, the areas that have been impacted by the buildings or structures, previously devoted to a nonconforming use, shall be restored to their natural state and condition consistent with all applicable preservation requirements established for the Gulf Beach Zone.

D. Maintaining Existing Non-conforming Density, in Excess of the Assigned Permitted Residential Density

Land Development Code Article V, Nonconformances, Division 1. Generally, Section 126-131, Intent, states in part that "It is the intent of this Land Development Code to prohibit the number of lawfully existing dwelling units or the existing floor area of a substantially damaged building to be increased, unless the **reconstruction and new development** fully comply with the requirements of this Land Development Code, including the maximum density permitted in accordance with the Development Intensity map of the Sanibel Plan".

The Charter for the City of Sanibel, as referenced by Land Development Code Section 3.10.2. Ordinance Increasing Residential Development Intensity states, "Actions to increase the residential development density as established in the Sanibel Plan, as constituted on May 4, 2004, except for rounding upward of fractional allocations of fifty percent (50%) or more to the next whole number, may be taken by the city only by ordinance approved by a majority of the qualified city electors voting at the next general election or a special election called for such purpose; provided, however, that nothing contained in this Section 3.10.2 shall preclude the city council from permitting residential densities in excess of those established in the Sanibel Plan, where the purpose is 1) to provide incentives for the Below Market Rate Housing Program, or 2) to permit redevelopment of existing parcels up to the number of existing dwelling units on May 4, 2004, provided the redevelopment is otherwise in conformance with the Sanibel Plan and the Land Development Code"

The assigned residential density within the Resort Housing District is 5.0-units per acre. The existing short-term resort housing developments located within the district that are nonconforming with density average 10.0 units per acre, reaching as high as 22.0 units per acre at the Colonnade. Existing motels, inns and cottages average 13 units per acre, reaching as high as 22.00 units per acre at the Holiday Inn. City Council has directed that the Planning Commission and its subcommittee, the Land Development Code Review Committee precede with the preparation of legislation

which would allow for the redevelopment of an existing short-term housing development, located within the Resort Housing District, to maintain the same existing number of units and habitable floor area.

For the further continuation of this study, the Planning Department, Land Development Code Review Committee and Planning Commission will defer to the City's Attorney for a legal opinion as to whether any proposed legislation to allow a resort to be entirely demolished and reconstructed above the permitted residential density can be achieved through either a legislative amendment, approved by City Council, or as a charter amendment, approved by referendum.

E. Summary Outline Regarding this Study's Priorities and Appropriate Direction

There is a concern that if there is a decline in the number of resort units there will certainly be an impact upon the Island's businesses. Redevelopment should serve as an alternative to the conversion of existing hotel and motel properties so as not to result in the loss of short-term rental customers that benefit our small island based businesses.

This Redevelopment Study will focus on those short-term rental developments that are located within the Resort Housing District. Should additional issues and problems arise, it will be important that they are properly addressed and prioritized in a manner that is consistent with the Study's guidelines as established by City Council.

- Redevelopment should not result in a negative change to the Island's character or natural environment.
- Redevelopment should present an opportunity to achieve conformance with the Land Development Code and Sanibel Plan.
- Redevelopment, in and of itself, should not be viewed as a means of achieving either economic revitalization or blight elimination.
- Redevelopment should be a helpful tool for preserving and strengthening Sanibel's unique natural and cultural assets.
- Redevelopment may pertain to those buildings and structures that were once developed that have now become physically challenged or functionally obsolete.
- Redevelopment shall not adversely alter existing residential densities, development intensity or the carrying capacity of the beaches.

DRAFT

MINUTES FOR APRIL 27, 2010
MEETING OF THE
LAND DEVELOPMENT CODE REVIEW SUBCOMMITTEE
THE COUNCIL CHAMBERS (MAC KENZIE HALL)
800 DUNLOP ROAD, SANIBEL, FLORIDA

Chair Valiquette called the meeting to order at 8:01 A.M. In addition to the Chair the following were present: Commissioners Phillip Marks, Paul Reynolds and Holly Smith. Staff present: James Jordan and Administrative Assistant, Susan Beck. Approximately 12 members of the public attended.

Commissioners Heidrick, Krekel and Ketteyman were excused from the meeting.

2. Approval of the April 13, 2010 Land Development Code Review Subcommittee meeting minutes.

MOTION: Commissioner Marks moved to approve the minutes as submitted; Commissioner Smith seconded the motion. The motion carried by a unanimous voice vote.

3. Discussions on Redevelopment in the Resort Housing District in Preparation of Appropriate Land Use Regulations for City Council's Consideration

Mr. Jordan began the discussion by saying a statement of purpose, definitions of Redevelopment, Reconstruction, Rehabilitation and a summary outline regarding the Study's priorities and appropriate direction were included in the staff report. Mr. Jordan suggested to get the discussion started - what limitations would there be with this Study in terms of the direction set by Council – one of these would be an exception to improvements of buildings that are devoted to a nonconforming use. The Code allows those uses to continue if they lawfully exist as long as they are not substantially damaged, removed or altered. They cannot be replaced. The only time when they can be replaced is when there is a Build Back issue. For the discretionary destruction of a nonconforming use these uses would have to, under this Study, be completely removed from the District and restored on a portion of the property where the use would be a permitted use. The most important section of the Code is the Charter that says Council does not have to go to referendum if two of the conditions that occur (1) an increase in density for Below Market Rate Housing and (2) or under Redevelopment based on existing dwelling units in effect of May 2004. Mr. Jordan further stated that to stay focused with this Study, there is an outline of key elements from Council discussions in terms of the parameters. Forthcoming discussions should keep in mind that Redevelopment will not result in a negative change to the Island character or natural environment. Redevelopment should present an opportunity to achieve conformance with the Land Development Code (LDC) and the Sanibel Plan and that Redevelopment should be helpful to preserve and strengthen Sanibel's unique natural and cultural assets. In Redevelopment structures that have become physically challenged or functionally obsolete could be built back but the key is that they must continue short-term rentals.

Chair Valiquette asked for Commissioner comments.

Commissioner Marks stated that the word substantial was used in the staff report and asked if this means 50%. Mr. Jordan said that substantial improvement means any improvement that exceeds 50% of the market value of the structure at the time of the destruction. Commissioner Marks stated that about 3 years ago prices went up and 40% was being considered. Chair Valiquette asked if the 50% is determined by using the FEMA form. Mr. Jordan said it was the same definition.

Commissioner Marks asked if the word systems could be added to the definition for Rehabilitation. The wording would be "Rehabilitation – the enhancements or updating associated with improving either the physical appearance or condition of existing buildings, structures or systems that when nonconforming do not amount to a substantial improvement".

Commissioner Marks suggested that the word challenged, on page 4 the next to the last bullet, be removed and substitute the word "substandard" or "functionally obsolete". Chair Valiquette suggested that the words "physically challenged" be deleted and add "substandard". Commissioner Marks agreed to this change.

Mr. Jordan stated that the public was notified of the meeting by e-mail and an ad was printed in the newspaper. In the future, if funding is available, mailings could be sent.

Commissioner Smith stated that the staff report was well written.

Chair Valiquette asked if a condo outside the Coastal Construction Control Line (CCCL) could be refurbished or would it be torn down. Mr. Jordan stated that it could be refurbished. Recent permits were issued for impact windows on lanais at Mariner Pointe. This was done in phases because it was the most cost and time effective way. The same procedures were used as for any nonconforming structure. We had a market value for the structure and a cost estimate of the work. The assessed value from the County Property Appraiser's office and bids from the general contractor were used. Chair Valiquette asked if repair costs for properties outside the CCCL are you going to be tracked over the 5-year period. Mr. Jordan said this is a limitation as part of the Community Rating System. The adopted definition for substantial can be more restrictive but not less restrictive. Under our definition, 50% is cumulative for a five-year period. After five years you begin from scratch. Chair Valiquette asked what happens if 30 units of a 50 unit complex have been refurbished to the 50% limit and 10 more units what to refurbish. Mr. Jordan said what is key is that the Planning Department would let the other unit owners know what they could do because of the timing and dollar amount. In the situation of a duplex, one owner could use most of the dollars that are available.

Chair Valiquette asked if are we going to separate the difference between interior remodel and the overall association work. Mr. Jordan stated the cost would be tracked with the building that is being improved. Chair Valiquette stated it could hurt them if they repair the inside and then ask to refurbish the exterior. Mr. Jordan said theoretically it could happen but this hasn't been experienced.

Commissioner Smith asked if what is being discussed is the inside of a unit and having this be cumulative. Commissioner Smith said she didn't think you could do this. The inside is individually owned and the exterior is community owned. Over the past 10 years Sun Dial has had significant improvements to the outside (concrete and porch work) but the inside didn't come into play at all.

Mr. Jordan said it needs to be understood that FEMA looks at the improvements to any portion of the building including HVAC, plumbing, carpet, flooring and anything that is done structurally to the exterior of the building, i.e., restoring concrete or replacing roof systems.

Chair Valiquette asked if we need to discuss separating interior work from exterior work. We are using the FEMA form but we are not governed by FEMA in regard to this Code clarification. If we have a situation where there is an overall association and they want to do the outside of the buildings and clean up the grounds should we have a separate set of standards versus the interior work, and leave FEMA out of it. Mr. Jordan said you cannot do this if the building is nonconforming to flood regulations. This is why we have definitions. If it is an improvement that is not seaward of the CCCL, i.e., a pool, basically the same standards are going to apply. This isn't because of flood requirements, it is for the requirement that a substantially improved structure that is devoted to a use that is not currently permitted in the district can't occur under the Code.

Chair Valiquette said he would hate to see a situation where during the last 3 to 5 years interior remodels have been done and when the association wants to make improvements to the building they are told you have to wait until the five years are up.

Commissioner Marks said one of the things we are trying to do is to encourage the associations and privately owned resorts to upgrade and rehabilitate. Commissioner Marks said he has a problem with the 50% limit. We are trying to define a policy for all the City's resorts and businesses so they can make improvements.

Chair Valiquette stated we are talking about improving the look of the Island; not a natural disaster.

Commissioner Reynolds said he is concerned about the 50% restriction too. What we have developed is a plan where we have a lot of inexpensive houses sitting on very expensive properties and a dedication to maintaining them. Commissioner Reynolds asked, regarding Mariner Pointe, how close the lanai work at Marine Pointe came to the 50% limit. Mr. Jordan stated, in terms of the entire building, not even 10%. This work helped to modernize the units; owners received an insurance reduction and the new material will decrease energy usage.

Commissioner Smith said she doesn't know any condominiums that track what is done to the inside of the buildings; the City does this. Commissioner Smith asked how FEMA tracks the 50%. Mr. Jordan said the City tracks the value of the work being assessed according to permits that have been issued. We can track this for the last 5 years. Commissioner Smith said the validity of these numbers is always somewhat questionable. Mr. Jordan said the numbers are what the City has accepted as the value. Commissioner Smith said the 50% is supposed to be a depreciated, as is, value. Mr. Jordan said the market value is the depreciated value. Commissioner Smith said this is very subjective and asked how the Planning Department determines an accurate number. Mr. Jordan stated that each application is reviewed with the Building Department and they look at the value that's been attributed to the project in terms of square footage and the scope of work. If there are questions, the Planning Department can seek outside appraisals. Commissioner Smith said the Planning Department can decide on a number after they receive the appraisal. Commissioner Smith agreed with Commissioner Marks that the 50% limit is a hard number to keep fixed.

Chair Valiquette asked (1) if we need limits and (2) why, if we are trying to have commercial buildings, especially on the beach, improve their appearance, are we limiting them to how much they can spend. Mr. Jordan said the only time this would apply is when a building is nonconforming with flood regulations. The Code also refers to this definition for structures that are devoted to a use that is not permitted in the district. Chair Valiquette stated that the district goes to West Wind Inn. Anything beyond that is going to have some issues.

Chair Valiquette stated that, per the Committee's decision, he will make the report to City Council. He will give Ms. Beck a list of questions/comments to be submitted to City Council prior to their next meeting.

Commissioner Marks asked Mr. Jordan if the 50% is only the assessed value of the structure. Mr. Jordan said this is correct.

Chair Valiquette stated that FEMA only deals with buildings - not even the pools.

Commissioner Marks asked if someone decides to improve their plumbing or put in a solar pool heater, high impact windows, etc., they shouldn't be limited. If we are encouraging people to go green, we should not impose limits. Once this starts momentum will build.

Chair Valiquette said he didn't believe that FEMA is going to work with this because when FEMA decided on new limits, i.e., if a building is valued at over \$300,000 you have to increase your windows and doors to hurricane standards. This causes a negative impact on the 50%. If a property is valued at \$350,000

or \$370,000 you have to open your roof structure and tie down the roof. This cost is huge and has a significant impact on what can be permitted.

Commissioner Reynolds said he agrees with a restriction regarding the 50% limitation. The houses on Captiva don't have the 50% limitation and the owners were not interested in rehabilitating their structures until Hurricane Charley. Chair Valiquette stated that FEMA is nationwide. Mr. Jordan said the 50% definition applies universally across the country.

Public Comments

Karen Storjohann, Sanibel resident, stated (1) the microphone system doesn't work well in MacKenzie Hall; (2) people in the back of the room can't hear clearly and (3) suggested the microphone system be replaced. Ms. Storjohann stated that she is both encouraged and discouraged about some of the things she heard during this meeting. She agreed with Commissioner Marks regarding including systems in the definition of rehabilitation and was also pleased that the Committee recognizes the importance of including condominiums in the mix. Ms. Storjohann said she is discouraged that Build Back is continuing to be included in the discussions regarding Redevelopment. This is a serious mistake and is not what the public was told when Build Back was approved. Ms. Storjohann said she is concerned because we are ignoring the property values of people who bought on Sanibel because the Island is a low density and low height island. According to the present Sanibel Code the resort across the Gulf from her property would have to rebuild at a lower density and this would decrease the height. If this property were rebuilt according to what is being discussed now, the height would be increased. We need to think about the impact to property values that surround the condos; this is a major taking from people who surround them.

Commissioner Reynolds asked Ms. Storjohann about the taking of her neighborhood because of dilapidating condos. Ms. Storjohann said she is not addressing condominiums, they are separate from hotels, motels and inns that are asking permission to demolish and redevelop with the current density this increasing their density and height. Condominiums are not asking for this, they are asking to refurbish, modernize, etc.; there would be no increase in height. Commissioner Reynolds asked Ms. Storjohann if she would like to live behind a dilapidated property. Ms. Storjohann stated that the property behind her was damaged by Hurricane Charley and then was damaged by fire. It refurbished and now does not look dilapidated and is below tree level but according to Redevelopment, if it rebuilds, it would be above the tree level. The company that owns this structure (1) has a lot of money; (2) owns several other properties on the Island and (3) will want to be able to do whatever they can to redevelop. We need to consider what neighbors were told when they purchased their properties, i.e., low density and low rise versus what is now being contemplated.

Chair Valiquette said we have to look at buildings that are grandfathered and buildings that are affected by FEMA changes. Everyone will have a "not in my backyard" concern that lives in or near the Commercial District. We can't punish the condos or resort owners. Mr. Jordan said this would happen even if we weren't having the Redevelopment discussion. It could also happen under new development in conformance with the Code. The skyline could also change with Build Back. Build Back is not being used to leverage these discussions but what came out of the Build Back discussions was that Redevelopment should be discussed in the near future.

Lynne Campean, Sanibel resident, said she was really impressed with the Committee; they have their hearts in the right place. These are very complicated problems. Her concern is that when you start changing the Code it becomes cloudy and you can open a can of worms. Ms. Campean is also concerned with the resorts rebuilding regarding height and density. There are two sides to this issue, (1) a debate about amending the current Codes and (2) a possible violation of a Code that was established

for 80% of the owners of the Island. Ms. Campean stated that she agreed that the 50% limit is not enough. When she moved to the Island it was because of the Code and because a realtor told them they would live in a place where there were rules. The solution is simple - supply and demand. When you have less you have more demand. This solution could be a win/win for everyone on the island. Property values would increase so that eliminating some of the structures will not hurt the Island's tax base nor will it hurt the people on the Island. The people who lose units have insurance that covers them for actual cash value not for replacement. If properties have to be removed the value of the land would be subtracted but they would be recompensed for the actual cash value of the structure. They are also covered by errors and omissions insurance. Ms. Campean doesn't see where going along with the present Code for replacement is a detriment to the Island or to the people who own the structures.

Judy Michie, business owner, asked what comprises the 11 resorts and asked if these could be named. She is concerned with Sun Dial who has 400 units; the City would miss these tax dollars if the ground-level units didn't exist. Ms. Michie asked how many of the resorts are condominiums and suggested changing the name from resorts to resort condos. She doesn't believe that the Sun Dial Corporation owns any units; they are owned by individuals. Ms. Michie is concerned about any resort being thought of as a giant firm. When you lump resorts and condos together this muddies the water. You have to remember that you are dealing with personal property rights because some units in a resort are owned by a private individual. This needs to be looked at closely because the City doesn't like law suits.

Sonja Smith, representing CASI, requested that staff reports be issued earlier so the public can have more time to review them. Ms. Smith reported that she has been meeting with association managers and board members to fine tune what is needed. Meeting participants agree that when properties need to be improved on their envelope, i.e., doors, windows, balconies, railings, the Planning and Building Departments are very reasonable to work with. The issue is when it is necessary to go outside the footprint. An instance is the ADA; resorts are compelled to follow ADA regulations. There is a section in the Land Development Code (LDC) that addresses this; Section 78-03. Some exploration of what this means and how it should be applied should be looked at. Another issue for improvement is amenities. In the Sanibel Plan there is a lot of encourage for resorts to improve their properties. This keeps people off the beach and streets. Ms. Smith encouraged the Committee to look at this Section as well as the Section regarding limitations. If we want to progress we need to look at nonconforming. If what we decide doesn't apply to nonconforming structures then basically these owners won't be able to do anything. Ms. Smith said she would like to meet with the Committee to discuss issues.

Karen Storjohann, Sanibel resident, felt she didn't make her point clear. Ms. Storjohann stated that if you take one of the 11 properties as it is right now and take a picture of what it looks like – then envision this structure redeveloped under the current Sanibel Plan and make a mental picture – then take a picture of redevelopment with the current density and elevation. There are three different pictures. The elevated structure is a much bigger building and probably exceeds the current height limit. If you change the density to what was given by Lee County and FEMA you have greatly changed what people thought they were buying.

Commissioner Reynolds said he thought one of the restrictions from City Council was that the 45' height limit would be maintained. Chair Valiquette said it was 45' above whatever the current base flood elevation. Mr. Jordan stated that City Council wanted the study to maintain all the current limitations of the Code with regard to coverage, clearance, height and setbacks; density could be carried forward. It was emphasized what would not be carried forward is if you chose to redevelop, this would be an elective and it would not involve properties that wanted to just rehabilitate or improve their site but they could do so and carry their densities forward. One point is that not every property will take this option because a large capital expenditure would be required. It is critical to keep in mind that we are looking at the Resort Housing District. There are 26 non-resort developments in the district and 62 resort

developments or condos that are allowed to rent for periods of less than 28 consecutive days. The non-resort units are not allowed to rent for 28 consecutive days. The motel and hotel units make up 11 properties; there are 12 timeshare properties. Some of these properties are non-conforming to density. This same logic was included in Build Back. No one would lose a unit as a result of disaster; these units have been in place for a long time and water/sewage infrastructure exists. If units were redeveloped they would not be any larger than they are now.

Chair Valiquette asked if Pointe Santos and Loggerhead Cay could rebuild their buildings. Mr. Jordan said that given the physical characteristics of some buildings will make rebuilding restrictive. Chair Valiquette asked specific to height, could they rebuild and who would lose units – owners of the bottom or top units. Mr. Jordan said that would be determined later. Chair Valiquette said the answer is that under this they couldn't rebuild. Mr. Jordan said it would be almost impossible.

Commissioner Smith said she believes inns and condominiums should not be separated. This should be inclusive. Everyone who comes forward after this ordinance is approved will have the opportunity to be looked at individually (site specific). The Committee unanimously agreed.

Commissioner Marks said in reference to Ms. Sonja Smith's comments regarding ADA, he doesn't believe the Commission would ever prohibit someone from putting in a ramp. Mr. Jordan stated that the Code allows for an increase in coverage for ADA requirements.

Chair Valiquette said he would report to Council during the May 4, 2010 meeting. He will supply the Planning Department with a list of some questions/concerns to submit to Council along with today's meeting minutes.

Commissioner Marks said as long as someone is paying a permit fee to the City and they want to go 68% instead of the 50% they should be allowed to do this.

There being no further business, Chair Valiquette adjourned the meeting at 9:05 A.M.

Respectfully submitted,

Michael Valiquette
Chairman