

**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)**

Wednesday, November 4, 2020

2:00 p.m.

Committee Members Present:

Tracy Hayden, Vice Chair	Jim Ink
Matthew Roepstorff	Tim Keene
Michael Reitmann	Buck Ward
Mike Roeder	Victor DuPont
Ian Moore	Bill deDeugd

Excused / Absent:

Randal Mercer, Chairman	Bill Ennen
Sam Hagan	Bob Knight
Carl Barraco Jr.	

Lee County Government Staff Present:

Deborah Carpenter, DCD Admin, Recorder
David Loveland, Director, Community Development
Audra Ennis, Zoning, Manager
Anthony Rodriguez, Zoning, Principal Planner
Amanda Swindle, Assistant County Attorney

Outside Consultants/Members of the Public Present:

Cynthia Chojnowksi	Rick Anglickis
James Ailant	Charles Edwards
Christine Correia	
John Correia	

CALL TO ORDER AND AFFIDAVIT:

Ms. Tracy Hayden, Vice-Chair called the meeting to order at 2:00 p.m. in the Commission Chambers, 2120 Main Street, Fort Myers, Florida.

Ms. Amanda Swindle reviewed the Affidavit of Publication and found it legally sufficient as to form and content.

APPROVAL OF MINUTES – July 8, 2020

Mr. Michael Reitmann made a motion to approve the July 8, 2020 minutes. Mr. Victor DuPont seconded. The motion was called and carried unanimously.

LDC AMENDMENTS – BACKYARD CHICKENS

Mr. Anthony Rodriguez, Principal Planner, Zoning section, provided a brief summary of the proposed amendments to the Land Development Code (LDC) relative to the establishment of keeping and raising of chickens as an accessory use within certain zoning districts. He also reviewed a Powerpoint which summarized the history to date. In June (2020), the Board of County Commissioners directed staff to prepare amendments to the LDC to allow for the keeping and raising of chickens in residential areas. From June to September 2020 staff did the research and prepared the proposed amendments, and in October the committee review process began. The Land Development Code Advisory Committee (LDCAC) reviewed the amendments on October 9th and the Local Planning Agency (LPA) considered the

amendments on October 26th. EROC's review completes the committee review process, after which the Board will hold two public hearings, anticipated to take place in January and February of 2021. In preparing the proposed amendments, staff considered direction from the Board, regulations established in neighboring jurisdictions and input from the University of Florida Extension Services.

The LDC currently permits the keeping, raising and breeding of chickens in Agricultural districts by right, and by Special Exception in the RS-4 and RS-5 single family residential zoning districts. The proposed regulations, if adopted, would allow for the keeping and raising of chickens as an accessory use to a single family residence or a mobile home within the RS-1 through RS-5 zoning districts and the MH-4 zoning district. As a matter of information, the MH-4 district was included because it requires a larger lot size than what is typical for other mobile home districts and allows for the establishment of private stables for equines by Special Exception. In recognition of the fact that an agricultural-type use is already permitted, staff included that zoning district in the proposed amendments. During committee reviews, one of the questions was the impact on planned developments or communities with private deed restrictions or covenants. Mr. Rodriguez stated that the proposed amendments do not allow for the keeping and raising of chickens in planned development districts, nor would these amendments supersede any private deed restrictions or covenants. He reviewed a map where chickens are currently permitted, a map depicting where the keeping and raising of chickens if the proposed amendments were adopted would be permitted, and a final map which was a hybrid of the two.

In addition to amending the use regulations table, there were also supplementary regulations for the keeping and raising of chickens as an accessory use. Current regulations permit for non-commercial poultry raising in AG Districts subject to a 100 foot setback from dwelling units under separate ownership for coops and structures that house chickens. The proposed regulations would eliminate that 100 foot setback in AG districts, and would also permit keeping and raising of chickens in conjunction with a single family residential or mobile home use. It establishes certain limitations to provide for compatibility with surrounding areas such as hens only (no roosters), a limitation of 4 chickens for lots of less than one acre and 6 for lots of one acre or more, and there would be a prohibition for slaughtering of chickens or the sale of eggs or manure on the premises. Additionally, the property must meet minimum dimensional requirements for the zoning district; the chickens must be housed in a coop that is properly ventilated and predator-resistant, does not exceed 120 square feet, or 8 feet in height, is setback 15 feet from adjacent property lines, and is setback 10 feet from a man-made waterbody or 25 feet from a natural waterbody, and provides continuous 6 feet high visual screening along side/rear property lines. Permitting would require a site plan with property dimensions, size/location of all structures, setbacks and screening; a chicken coop plan with dimensions, construction materials and predator-resistant design features; and additional information including proposed number of chickens, a manure management plan, letters of no objection from adjacent property owners and proof of completion of a poultry keeping class offered by the University of Florida Agricultural Extension Service. Staff has been working with the local Extension Office and they are prepared to offer that class if these regulations are adopted.

Through the committee review process, the LDCAC voted to not adopt the proposed amendments citing concerns related to compatibility, specifically nuisance related impacts, the potential burden that may be placed on County Code Enforcement staff, as well as the potential of infighting between neighbors due to the letters of no objection that would be required. The LPA also voted to not adopt the proposed amendments, finding the proposed amendments inconsistent with the Lee Plan (Policy 135.9.6).

Following Mr. Rodriguez's presentation, Ms. Hayden said she would entertain questions and comments from the Committee but there would be an opportunity for discussion again following the public comments.

Mr. Matthew Roepstorff asked where chickens were currently allowed in residential areas. Mr. Rodriguez responded that chickens are currently allowed in the AG-1, AG-2 and AG-3 zoning districts by right and in RS-4 and RS-5 by Special Exception. Mr. Roepstorff also asked for clarification of the difference between the Special Exception process and the proposed amendments. Mr. Rodriguez said that the Special Exception process includes a one step public hearing process before the Hearing Examiner. A special exception is required to meet certain requirements of the Land Development Code, one of which is compatibility with the surrounding area. The process also allows staff to evaluate the request and provide conditions if recommending approval of that special exception. The proposed amendments provide the ability to establish this use in a wider number of zoning districts and eliminates the requirement for a special exception subject to meeting the application requirements as outlined.

In response to a question from Mr. Tim Keene concerning notification of surrounding property owners, Mr. Rodriguez said that in lieu of the public hearing process where all property owners within 500 feet are notified of the special exception request and afforded the ability to voice their objections at a public hearing, the proposed amendments establish a permitting process that would require letters of no objection from abutting property owners, all of whom would need to sign off on the permit request.

Mr. Buck Ward asked if an applicant who applied for a permit for 2 chickens, would later have to amend their permit to allow for 4 chickens, and at what point would they be in violation of their permit. Mr. Rodriguez said the regulations establish a maximum number of chickens, therefore having less would not trigger a violation; as far as coming back to amend the permit, that had not been discussed yet.

Mr. Keene asked how violations would be handled; Mr. Rodriguez said violations would be handled through the standard code enforcement process. A complaint would be filed, the property would be inspected, a violation would be issued with abatement of the violation as the goal.

Ms. Hayden announced that committee members and staff had received a number of emails both in support of and in opposition to the issue, and Lee County staff was tracking all of those emails. She then invited members of the public to speak.

Ms. Cynthia Chojnowski, a resident of Lehigh for 33 years, spoke in opposition of backyard chickens. Comments/concerns:

- The community is a residential community and she would like it to stay that way;
- Other communities close by, Buckingham or Alva, allow chickens;
- Chickens spread diseases, salmonella for one;
- Has a concern that people won't follow the rules creating enforcement issues;
- Chickens require daily care and she was concerned that would not be done;
- Preferred to see any money that might go toward enforcement go instead toward lighting or road paving.

Mr. James Ailant, a Fort Myers resident since 1953, spoke in support of backyard chickens. Comments/concerns:

- At one time he lived near Edison Home where "everyone" had chickens;
- He lives near the river in Fort Myers and currently has 2 neighbors with chickens;

- He was in favor of up to 6 chickens;
- In favor of well kept containment fields;
- In favor of monitoring rooster presence, since that is an issue;
- In favor of the chicken ordinance with the right guidance.

He asked if there was a grandfather clause for those that already have chickens. Ms. Hayden advised that staff would address that question at the end of public comments.

Mr. Richard Anglickis, a resident of Lehigh Acres since 1963, spoke in opposition to backyard chickens. Comments/concerns:

- He felt the issue was not so much about chickens, but rather about property rights;
- He provided a historical overview about Lehigh's development and provided a copy of his deed which he said contained language common to all or most deeds for recorded lots in Lehigh: "No animals, livestock or poultry of any kind shall be raised, bred or kept....." and referred to this as a deed of restrictions;
- He felt the County does not have the right to pass an ordinance that supersedes or infringes upon the rights contained in deeds of restriction;
- He recommended that the ordinance be enacted in Unincorporated Lee County, rather than in Lehigh where these deeds of restriction exist.

Mr. Charles Edwards, a resident of Lehigh Acres, spoke in support of backyard chickens.

Comments/concerns:

- He is current president of Lehigh Acres Community Council;
- He has been working on this issue since 2016;
- He responded to the previous comment regarding deeds stating that the state had passed the Fair Title Act which required a developer to renew deeds of restrictions within a certain period of time or "they don't exist". In any case, he had been advised that the County does not get involved in deed issues;
- Florida now has 60 counties that allow chickens; Charlotte County being the latest;
- He felt the ordinance was too restrictive, especially with respect to getting neighbors approval, and would create code enforcement issues, and suggested the ordinance be approved with some modifications;
- He said beneficial economic impacts would include more money for feed stores and other retailers that sell coops, fencing and chickens;
- He felt "we should have the same rights" as those 60 other counties.

Mrs. Christine Correia, a resident of Lee County spoke in support of backyard chickens.

Comments/concerns:

- She did not feel this was just a Lehigh issue;
- Urban agriculture is a "thing" and is not going away;
- In response to comments regarding Lehigh deeds of restriction, if the deeds are valid the proposed amendments specifically state that these amendments would not supersede any private deed restrictions or covenants;
- She did not agree that regulations should be based on whether people might not comply;
- In response to the comment about moving to agricultural lands in order to have backyard chickens, she felt this was a property rights issue;
- She said chickens are bio-mass recyclers; she reviewed several ways that chickens could save money;
- She said that Austin, Texas incentivizes owning chickens.

Mr. John Correia spoke in support of backyard chickens. Comments/concerns:

- Moved to Lee County from California which is heavily regulated but allows backyard chickens.
- Economic returns include not only feed stores and other retailers, but also the community. He provided information on Tour de Coop, an educational, community growth program.
- He recommended BioCycle.net (Organics Recycling Authority) for more data supporting the argument for backyard chickens.
- He felt that the ordinance should be amended especially with respect to getting approval of neighbors.

Ms. Jennifer Hagen, a Lee County native spoke in support of backyard chickens.

- In 2014, the City of Bonita Springs codified their backyard chicken ordinance after a 2 year pilot program. She was the planner that initiated the program and said during that 2 year trial period there were no complaints;
- In 2015, the City of Fort Myers approved their backyard hen program. She worked on that program as well; it was approved without a pilot program;
- She currently works as a Family Consumer Science Agent for the University of Florida which includes the science of food safety;
- She spoke about the importance of Urban Agriculture and how, in light of COVID, citizens want to know how to source local commodities and want control over where their food comes from;
- She talked about the importance of education which would address issues such as property rights, property values and nuisance considerations;
- Her generation and others have a desire to live within communities that recognize the importance of urban agriculture; economic development and property values might be enhanced as a result of that.

Following public comments, Ms. Hayden asked staff to address the question about coops and “grandfathering”. Mr. Rodriguez responded that the presumption was that if chickens are not currently permitted there would be no coop; if there was a coop it would be required to adhere to the permitting requirements being presented.

Ms. Hayden asked staff for clarification about the deed restrictions for Lehigh. One speaker said the deeds as written were deeds of restrictions; another speaker said according to state statute, those deeds had to be renewed by the developer within a certain time or they were no longer valid. Ms. Swindle responded that the County has no voice in disputes between private parties regarding the validity of deed restrictions. Therefore to the extent that if the restrictions are upheld by a court of law, this ordinance would have no effect on them.

Mr. Michael Reitmann asked if Lee County had ordinances about other animals, such as rabbits, pigs or ferrets and if not, why chickens were singled out in the ordinance. Ms. Audra Ennis, Zoning Manager, responded that the Land Development Code regulates farm animals; cattle, equines, chickens, pigs/swine; which are viewed as typical/conventional farm animals, and there are regulations in the code relative for keeping chickens for non-commercial purposes (as discussed earlier) within the AG districts and by Special Exception in RS 4 & 5. To answer the specific question, the only provision the County has to allow what would otherwise be considered a farm animal in residential areas, is the ability to keep a pot bellied pig. Conventional pets that are traditionally kept as household pets like cats, dogs, rabbits or ferrets are not regulated.

Committee discussion continued with Mr. Roepstorff expressing his opinion that the issue was not just about chickens, not whether they are good or bad, or about property rights, but rather

if the use is compatible with certain residential uses that this ordinance would allow by right. If a person purchased a property knowing that the use was not allowed, there would be the expectation of not having backyard chickens. If having backyard chickens was a use that was not allowed it would not be appropriate to then say that property rights were being deprived. The way the Land Development Code (LDC) was written, chickens were allowed in AG zoning but limited in residential areas, and he asked what about that delineation had changed from then to now. He agreed that there may be environmentally sound pros and cons for backyard chickens, but did not feel that this was a compatible use especially in residential districts with smaller lot sizes. Discussion followed about what lot size might be considered more appropriate, most in agreement that an RS-1 lot with a minimum lot size of 7500 SF would be quite small.

Ms. Hayden asked for a clarification of the Local Planning Agency (LPA) motion that the proposed amendment was inconsistent with the Lee Plan. Mr. Ink, a member of the LPA, explained that the Lee Plan requires regulations be usable and enforceable. The 10 foot setbacks from canals/manmade water bodies, especially in Lehigh where there are many, was of concern since chicken waste if not taken care of properly could become pollutants and get into the water system. There was also discussion about coops and the lack of detail about the fact that the coops have to be designed by a professional to meet the Florida Building Code or must be approved by a product approval system; Florida does not have an approved coop. There was also discussion about noise concerns because RS-1 and RS-2 are generally smaller lots, close to each other and may cause neighborhood compatibility issues. After a short discussion, the LPA voted against the amendment because it was inconsistent with the Lee Plan.

Mr. Keene suggested rather than specifying a zoning category, instead specify a minimum parcel size and increase setbacks to address some of the concerns, like noise or runoff. He said even in RS-1 there are larger lots and he would be interested in more research about minimum lot sizes. He suggested a pilot program, initially more restrictive, and for larger lot sizes, and then after a test period look at complaints, code enforcement issues or additional costs and permitting problems, then re-evaluate if needed. Mr. Ink commented that the current regulations include a 100 foot setback to an adjacent dwelling unit in AG-2 districts, and that the 100' setback is negotiable for RS-4 and RS-5 in the Special Exception process, but the proposed amendment reduces that setback substantially. Staff confirmed that removing that language had not taken into consideration the number of chickens in relation to the setbacks and agreed to look at that language again.

Mr. deDeugd did not wish to see regulation where it was not needed. Ms. Hayden reiterated that communities with deed restrictions and communities within planned development would not be affected by the proposed amendment. She was in support of those that wished to eat more organically, want to have chickens, eggs and gardens, however understood why some would be fearful of having chickens nearby.

Mr. Roepstorff made a motion to not adopt the ordinance as written, but with the caveat that he would like to have more information with respect to lot sizes. Seconded by Mr. Michael Reitmann.

Mr. Keene also wanted more information, especially a confirmation that the proposed amendment would not bring the permitting process for chickens into the AG-2 district as a result of language that had been eliminated. If staff was to present a pilot or test program starting out with larger lot sizes first, he would be interested in that.

Ms. Hayden confirmed that the motion was to not approve the amendment as written

and called the motion. The motion passed by majority, 7-3.

Staff confirmed that the Board would receive the proposed amendment along with a summary of committee comments.

LEECARES COVID-19 RELIEF PROGRAMS

Mr. David Loveland announced that he would be making the LeeCares presentation since Mr. Salyer was unable to attend due to the scheduling conflicts.

He reviewed a PowerPoint presentation that provided statistics for the program through the end of October 2020. He reported that Rounds 1 & 2 for the Individual Assistance Program (mortgage, rent, utilities) approved more than 12,700 applications for payments that total \$26M. More recently another round of additional utilities assistance received 3300 applications for another \$777,000. Individual slides provided a breakdown of funding and expenditures of other programs, and Slide 15, entitled "CRF Direct Allocation Expenditures" summarized approvals and payments to date.

The committee asked why the gap between what has been approved and what has been paid for the food banks and food pantries. Discussion followed. Food banks and pantries apply for reimbursement as they restock. The need is great but it is difficult to keep up because of storage and freshness concerns.

The Committee asked if money not spent by the end of the year would still need to be returned to the Treasury. Mr. Loveland confirmed that the deadline had not changed, but that the County continues to look for ways to let people know that the money is available and is committed to doing everything possible to make use of the funding available and get the money to everyone as quickly as possible. Although the call center has been shut down, calls for assistance are being directed to individual departments. The Department of Community Development (DCD) through its housing program continues to help reimburse utilities and rent. Originally allocated for low or very low income levels, the income levels have been increased and the program was opened up to both Fort Myers and Cape Coral.

He reviewed the last slide which showed a list of COVID-19 grants, including not only the CARES Act money in the amount of \$134.5M, but also grants that went directly to other agencies or departments, all of which totaled \$201M. Of the \$134M, approximately \$75M remains. The County continues to try to find ways to get this money into the hands of those that need it and there may be some leeway to commit some funds that would allow for payments into the coming year but still stay within the rules. There was a brief discussion about current negotiations going on in Washington and whether there will be a second stimulus package, if the current funding will be part of that or if the money will actually need to be returned. When the committee meets again in January, some of those questions may be answered.

Ms. Hayden asked about the individual assistance program and whether that initial \$2,000 amount had been increased or could someone get additional help? Mr. Loveland said that the second round of the individual assistance allowed individuals to reapply and the dollar amount was increased as well in that second phase.

There was no further business. The meeting was adjourned at 3:45 p.m.

The next meeting was tentatively scheduled for January 13, 2021.