



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
BOARD CHAMBERS
2120 MAIN STREET, FORT MYERS**

**WEDNESDAY, JANUARY 12, 2022
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – November 10, 2021
3. LDC Amendment – LDC Sec 12-121(j) (Limited amendments to existing mine zoning approvals)
4. Adjournment
Next Meeting date: March 9, 2022

To view a copy of the agenda, go to www.leegov.com/dcd/calendar.

For more information, contact Debbie Carpenter, (239) 533-8345 or DCarpenter@leegov.com.

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**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
(EROC)
Wednesday, November 10, 2021
2:00 p.m.**

Committee Members Present:

Randal Mercer, Chairman	Buck Ward
Tracy Hayden, Vice Chair	Jim Ink
Matthew Roepstorff	Tim Keene
Michael Reitmann	Bob Knight

Excused / Absent:

Victor DuPont	Ian Moore
Sam Hagan	Bill Ennen
Mike Roeder	Bill deDeugd
Carl Barraco Jr.	

Lee County Government Staff Present:

David Loveland, Director, Community Development
Anthony Rodriguez, Manager, Zoning
Jessica Sulzer, Manager, Development Services
Amanda Swindle, Assistance County Attorney
Adam Mendez, Planner, Zoning
Dirk Danley, Senior Planner, Zoning
Deborah Carpenter, DCD Admin, Recorder

Outside Consultants/Members of the Public Present:

George Quintero, AP Welding

CALL TO ORDER AND AFFIDAVIT:

The meeting was held in the Admin East Building, Room 118, 2115 Second Street, Fort Myers, Florida. Mr. Randal Mercer, Chair called the meeting to order at 2:00 p.m.

Ms. Debbie Carpenter, recording secretary said the meeting was legally advertised and later Ms. Amanda Swindle confirmed the Affidavit of Publication was legally sufficient as to form and content.

APPROVAL OF MINUTES – JULY 14, 2021

Mr. Matt Roepstorff made a motion to approve the July 14, 2021 minutes. Ms. Tracy Hayden seconded. The motion was called and carried unanimously.

LDC AMENDMENTS – FOOD TRUCKS (MOBILE FOOD VENDORS)

Mr. Anthony Rodriguez, Zoning Manager, introduced the proposed Food Truck / Mobile Food Vendors amendment and reviewed a Powerpoint presentation. He stated that the County's current regulations allow mobile food vendors, aka food vending "carts", only within the Lehigh Acres Community Planning area subject to certain requirements including location, setbacks, separation requirements and overall zoning district locations. The County currently enforces those regulations through issuance of an annual temporary permit for a food vending cart,

however as a result of recent amendments to state statute the County is now pre-empted from requiring separate permits beyond what is required as part of licensure at the state level for mobile food truck vending operations. Last month the Board authorized staff to craft food truck regulations not just for Lehigh, but countywide. The intent was to remain consistent with state statute while expanding permitted locations. In preparation of these amendments staff considered the existing regulations with respect to mobile food vending within Lehigh Acres and also looked at other jurisdictions' existing regulations.

The proposed regulations will:

- Allow mobile food vendors to operate largely within commercial and industrial areas, as well as within recreational amenity areas in residential developments;
- Prohibit mobile food vendors from operating within street rights-of-way, landscape buffers, and preserve areas;
- Require compliance with setbacks from roads, residential lots and business entrances for mobile food vendors;
- Mitigate safety hazards and nuisance-related impacts resulting from the operation of a mobile food vendor; and
- Prohibit the establishment of any semi-permanent or permanent mobile food vending operation.

Mr. Roepstorff asked where food trucks were setting up shop. The response was that generally they set up on developed lots in commercial strip centers after obtaining permissions from the owner. He also asked if there had been specific complaints and Mr. Rodriguez replied that one complaint was that the use was becoming semi-permanent - the food truck does not move at the end of the day - and that the area around the food truck becomes a party site. Mr. Roepstorff asked where the food trucks go at the end of the day. Mr. Rodriguez answered that many of the food trucks are required, depending on how they prepare their food, to associate with a commissary kitchen for food prep. Often these commissary kitchens provide the ability to store trucks. He had not heard complaints of trucks being parked on residential lots.

Mr. Bob Knight asked about the food vendors such as those at gas stations, Home Depot or Lowe's where they stay set up on a semi-permanent basis and put out chairs and umbrellas. Mr. Rodriguez said regulations would allow the food trucks to operate on properties such as these, however the proposed regulations would not allow them to stay set up, they would be required to break down every night.

Mr. Mercer asked why ice cream trucks are different than food trucks. Mr. Rodriguez said inherently ice cream trucks are typically more transient in nature, they drive through neighborhoods, stop and dispense their product, then move on. A food truck tends to be more permanent, it's not as mobile and uses social media to advertise where they will be operating.

Page 6, Para. 2. Ms. Hayden asked if she was to contract to have food trucks come on her personal property, could she have more than 2 trucks? Mr. Rodriguez responded that the way the language was written now that more than 2 would not be allowed, but he suggested that staff could look at this and modify the language depending on the scale of the event, possibly

craft a specific exemption for an event where there would be several hundred patrons and a variety of food items offered. She mentioned Babcock Ranch as an example where they have large scale food truck Fridays.

Mr. Rodriguez said staff will be looking at food truck parks in the future, which is something that has become popular. These parks provide semi-permanent pads and generally offer amenities such as restrooms or playgrounds. The Park itself would require a development order. The intent of these proposed regulations is not to regulate something of this scale.

The LPA brought up the point that a vacant property may have a development order but is not yet under development, and that there should be an opportunity to utilize that property for a mobile food vendor.

Mr. Mercer said that large commercial concerns with multiple tenants offering a variety of different food trucks and food options is a great amenity for the tenants, but asked if there should be a cap on the number of food trucks allowed in that instance.

Mr. Tim Keene asked about the reference to 509.241 in Pg. 6 para. 3. and whether the county should require a commissary license. Mr. Rodriguez said it would be dependent on the type of food truck operation. Some food trucks where there are no on-board cooking facilities, would be required to have a commissary affiliation. If there are on-board cooking facilities where fresh meals can be prepared, an affiliation with commissary kitchen would not be necessary. Mr. Keene suggested that in order to get a business tax receipt that there should be an association with a commissary. He also suggested the County may want to consider any unintended consequences such as parking these trucks in residential areas.

Mr. Mercer recognized Ms. Amanda Swindle, Assistant County Attorney. She stated that the County is unable to require any additional licensing over and above that required by Florida Statute. There was a brief discussion about the fact that City of Fort Myers has required this commissary requirement in their ordinance. Her understanding was that the County cannot require any additional licensing, but perhaps a specific condition of having an association with a commissary can be crafted in a way that does not violate the pre-emption, but she thought the intent of the statute was to pre-empt the regulation of mobile food vendors from local government.

Mr. Roepstorff asked for a clarification about alcoholic beverages on Pg. 7 (6) asking who would have responsibility for compliance. Mr. Rodriguez explained that food vendors may not sell alcohol and there is no "bring your own". It would be incumbent upon the vendor to assure compliance, but it would also be subject to enforcement by the Sheriff as a public consumption issue. Discussion continued concerning consumption on premises, with Mr. Keene recommending additional language that consumption on premises licensing does not extend beyond that which was permitted to prevent purchasing alcohol from a licensed establishment, but then consuming it at the food truck.

Mr. Buck Ward asked about specific instances, such as a new business opening or open house, and Mr. Rodriguez confirmed that a temporary special event permit would override and would permit some deviation from this regulation.

He explained that a temporary event permit and a Special event permit are basically the same except for the scale of the event. Either can permit a set of activities to be associated with that event. All of the activities that are associated with that permit would be allowed to remain on the property for the duration of that permit. That could potentially include the placement of mobile food vendors and perhaps through the special event process those food vendors could be allowed to remain for the duration of the permit. The intent of the regulation is to regulate single mobile food vendors not associated with any other event. He confirmed the number of event permits allowed for a site – 4 temporary permits per year, 30 day maximum duration and 45 day blackout period between issuance.

Ms. Hayden had a concern about the cap on the number of food trucks allowed on Pg 9 (20). She did not feel that a maximum of 2 was a good number. Her opinion was that only as many food trucks that can fit into the area would be brought in. She would prefer to remove #20 altogether, but was curious if there was a reason for it or if staff found that number in some other regulation. Mr. Rodriguez said that the existing regulation permits a maximum of one truck per lot and establishes +/- 1000 feet between mobile food vendors. Obviously with the popularity of food trucks and the desire to open it up to a broader swathe in the county that is really not a tenable situation. When staff did the research for the proposed regulations, there were two ways to approach this situation, one was to establish a cap, the other was to establish a cap using the size of the property. According to this discussion, another alternative would be to allow the market and the owner's permission to determine the number of trucks.

There was a brief discussion about the section concerning *Prohibited locations: on undeveloped property* with clarification that mobile food trucks may operate on partially developed property that has an approved development order. Ms. Hayden referred to Pg 11 (e)(1) with respect to operating closer than the required 50 feet of brick and mortar establishments if there is permission from the owner. Mr. Rodriguez said that this regulation would rule. Ms. Hayden also commented that she knows of neighborhoods that invite food trucks into the area where the trucks park in the right-of-ways, within 50 feet of residences and their locations are announced on social media. Although she understood that this regulation would prohibit this scenario she did not agree that larger commercial concerns with common areas are the only ones that should be able to offer this amenity.

Mr. Mercer asked for a motion to approve this document with the comments that the LPA made. Mr. Jim Ink made the motion to approve the document with LPA comments. Seconded by Mr. Roepstorff.

Discussion followed concerning comments that the Committee would like to have included in the document:

Ms. Hayden made a motion to insert a comment that (b)(20) no more than two mobile food vendors may locate on an individual lot be removed. Seconded by Mr. Roepstorff.

Mr. Tim Keene disagreed, thinking there should be a more detailed standard depending on the size of the parcel, and Mr. Ink agreed.

The motion was called and carried, with Mr. Keene and Mr. Ink opposed.

Ms. Hayden made a motion to insert a comment to remove (d)(4) “within 50 feet of a single-family residential lot....unless separated by a...wall”. Mr. Roepstorff seconded.

Mr. Ink said he could not support that motion, and Mr. Keene suggested that “lot” be changed to “home”. Mr. Ink said he could support that.

The motion was called with 3 in favor and 4 against. The motion did not carry.

Mr. Ink amended his motion to add only Ms. Hayden’s comment that (b)(20) be removed. Mr. Roepstorff seconded. The motion was called and passed with Mr. Keene and Ms. Hayden dissenting.

Mr. Loveland informed the Committee that another series of amendments would be coming forward for review which included changes related to responsibilities of the Hearing Examiner, addition of casitas to planned developments, update of the noise ordinance, addressing recent legislation which pre-empts the county from regulating interior building standards for single family or multi-family structures. The Board was scheduled to review these amendments at their upcoming Work Session on December 7th. Committee reviews will follow.

There was no other business. Mr. Mercer asked if there were any public comments; hearing none, he adjourned the meeting at 3:10 p.m.

The next meeting was tentatively scheduled for January 12, 2022.

MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

**TO: Executive Regulatory
Oversight Committee**

DATE: January 5, 2022

**FROM: Anthony R. Rodriguez, AICP
Zoning Manager**

The attached Land Development Code amendments, scheduled for consideration at January 12, 2022 meeting, have been prepared to establish a procedure within Chapter 12 that expands the limited procedures for processing a zoning amendment for Existing Mines under Land Development Code (LDC) §12-121(j). The new procedure would permit Existing Mines to amend their current zoning approvals to allow for increased depth within the previously approved boundaries of the mine. Staff seeks input and a recommendation as to whether the proposed amendments should be adopted by the Board of County Commissioners (BoCC).

Background

Currently, LDC §12-121(j) permits Existing Mines to amend their current zoning approvals to allow for dewatering and/or an extension of the mine duration.¹ The existing Code provides submittal and approval requirements for those two types of Amendments. Under current regulations, if an Applicant seeks an amendment to their Existing Mine that is not within the ones listed in §12-121(j), the Applicant must rezone to a Mine Excavation Planned Development (MEPD).

On December 7, 2021, the BoCC authorized County Staff to proceed with amendments to LDC §12-121(j) to provide a mechanism to allow Existing Mines to pursue an increase in maximum permitted depth by amending their current zoning approvals instead of rezoning to a MEPD.

Summary

The proposed amendments would permit an applicant to increase the depth of the already approved mining footprint. No other amendments to the underlying zoning approval would be permitted under the proposed changes. The proposed amendments establish additional submittal requirements for consideration of a zoning application for a depth increase. The regulations are intended to focus Staff's review of the application to those items relevant to the increase in depth. The proposed amendments do not alter the

¹ The Code defines an Existing Mine as "a mine operation approved by the Board of County Commissioners or Hearing Examiner prior to September 1, 2008." Typically, these approvals were accomplished through a Special Exception or Industrial Planned Development.

public hearing process or the public's participation in that process, and an application to increase the depth of an Existing Mine under the proposed changes would go through the same public hearing process required for an MEPD or other zoning approvals.

The proposed regulations, if adopted, will streamline the application process for such requests by eliminating the need for an Applicant to pursue a plethora of waivers for submittal requirements that would not be applicable to the request. Likewise, the proposed amendments will eliminate the need for an Applicant to request an unknown number of deviations from Chapter 12 requirements that would not be relevant or rationally related to the request for a depth increase. Both waivers and deviations must be approved by Staff or the BoCC. The proposed amendments to LDC §12-121(j) will provide clarification on the submittal requirements for depth increases and focus County Staff on the relevant review. Additionally, the proposed amendments will provide Applicants with assurances that they do not need to request waivers or deviations from provisions of Chapter 12 that are not relevant or applicable to the underlying request for a depth increase.

The proposed amendments are intended to focus the review of this type of request while eliminating the untimely delay caused by processing unnecessary waivers and/or deviations, while allowing Applicants to better utilize the resources within the boundaries of their mine. If approved, the proposed amendments will reduce unnecessary permitting delays and would permit a greater use of existing mines in those areas that are already impacted by mining operations.

Attachment – LDC Amendments Draft

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: Amendment to LDC Sec. 12-121(j)

1. What is the public interest that the Ordinance is designed to protect?

The use and regulation of land. To implement the Lee Plan and protect the public health safety and welfare. The proposed amendments are intended to streamline the application process for an existing mine (as defined) as it relates to increasing the depth of approved excavation.

2. Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?

Not applicable.

3. Is the regulation required by State or Federal law? If so, to what extent does the County have the authority to solve the problem in a different manner?

Not applicable.

4. Does the regulation duplicate State or Federal programs? If so, why?

No.

5. Does the regulation contain market-based incentives? If not, could that be used effectively?

Not applicable.

6. Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?

The intent of the regulation is to streamline the application process, thereby reducing burdens while continuing to protect the public interest.

7. Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?

No.

8. Does the regulation impact vested rights?

No.

9. Does the regulation provide prompt and efficient relief mechanisms for exceptional cases?

Yes. If amending an existing mine zoning approval does not meet the established criteria, then the applicant may pursue a rezoning through the Mine Excavation Planned Development (MEPD) process established in the LDC. Submittal waiver and deviation requests are available through this process to provide prompt and efficient relief in exceptional cases.

10. Even though there is an interest to be protected, is it really worth another regulation?

Yes. The proposed regulation is intended to streamline the application process, thereby reducing cost and time burdens to applicants and staff.

11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?

Not applicable.

12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?

No change in cost will result from the proposed regulation.

LDC Section 12-121(j)

(j) Limited amendments to existing mine zoning approvals. ~~Amendment to an existing mine zoning approval constituting a substantial change must be approved through the public hearing MEPD process; provided, however, a~~An existing mine, meeting the criteria set forth in section 12-121(a), may obtain a limited amendment to the underlying zoning approval for dewatering, ~~or an extension of the mine duration, and/or a depth increase within the previously approved mining footprint,~~ as follows:

(1) The mine operator must file an application on the form prescribed by the County along with the appropriate fee. Review of the application will be limited to the contents of the application which must include; ~~at minimum, those items set forth in section 12-121(g); and~~

a. For dewatering: those items set forth in section 12-121(g) and submittals addressing the issues set forth in section 12-117(c).

b. for an extension of mine duration: those items set forth in section 12-121(g) and

1. A narrative substantiating the need for the extension and its proposed duration.

2. Submittal substantiating compliance with the following additional criteria:

i. Continued consistency with the Lee Plan.

ii. Compatibility with existing and approved development in the surrounding area.

iii. Whether the extension will place an unreasonable burden on essential public facilities and infrastructure.

3. Documents establishing that the extension request was filed at least six months prior, but not more than one year before, the expiration date set forth in the underlying zoning approval; and, that the mine was in active physical operation at the time of the request.

c. For a depth increase within the approved mine footprint only:

1. An updated traffic impact statement that addresses traffic associated with the increased production of mining that is projected to result from the proposed depth increase. The updated traffic impact statement will include an updated level of service analysis and evaluation of site-related improvements, if any, necessitated by the increased production.

2. Integrated surface and groundwater modeling must be provided that analyzes the impacts of the additional depth of the mine on groundwater and surface water resources and natural systems. The analysis must also include the following:

i. Delineation of all lithologies underlying the site down to and including the first regional confining beds;

ii. Documentation establishing that the proposed depth of excavation will not breach an aquaclude or confining layer;

iii. Evaluation of historic water level data for the mine including identification of any trends or impacts from mining operations; and

iv. Description of the monitoring system for surface and groundwater levels and quality to assess any degradation of surface and groundwater resources resulting from the depth increase. The monitoring system must address the travel times to wellfields and residential wells. The application for a depth increase must include all available monitoring data for three years prior to the date of application, and will assess the change in flow, timing of travel, and direction of surface and groundwater on-site and in the impacted area resulting from the increased depth.

3. Soil boring analysis that demonstrates the depth of limerock materials and the depth of the confining layer.

4. A list of surrounding property owners and map in accordance with section 34-202(a)(8) and (9).

5. A narrative describing any impacts the proposed depth increase will have on:

i. mine operations and equipment used at the mine, to include updated quantity of material to be excavated, changes in approved hours of operation (if any), and an updated hazardous materials emergency plan;

ii. existing neighboring uses;

iii. hydrogeologic conditions on-site and within the impact area, as reflected in the modeling required by section 12-121(j)(1)c.2. above;

iv. wetlands and watershed protection;

v. wildlife conservation; and

vi. transportation routes including anticipated traffic to and from the mine, based upon the updated traffic impact statement required by section 12-121(j)(1)c.1. above.

6. A complete copy of existing permits, pending permit applications, and correspondence with federal and state permitting agencies in accordance with section 12-114.

(2) The request for a limited amendment under this section may only be filed if the underlying zoning is valid at the time the request is filed.

(3) The request for a limited amendment must be processed in accord with the procedure set forth in sections 34-83 and 34-145, including the review criteria, regarding Hearing Examiner and Board review and action on the request.

~~(4) This subsection may not be expanded to include other amendments to the underlying zoning approval, even if filed in conjunction with the request to dewater or extend the mine duration.~~ Amendments to bring the existing mine into greater compliance with current mining regulations, including Chapter 12, may be requested by the applicant in conjunction with one or more of the amendments authorized above.

(5) A mine development order amendment must be approved prior to commencing activities authorized by the zoning amendment. Review of the mine development order amendment will be limited to incorporating the specific changes approved by the zoning amendment.