

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

**Wednesday, March 9, 2022
2:00 p.m.**

Committee Members Present:

Randal Mercer, Chairman	Jim Ink
Tracy Hayden, Vice Chair	Ian Moore
Mike Roeder	Bill deDeugd
Bob Knight	Matthew Roepstorff
Mike Reitmann	

Excused / Absent:

Victor DuPont	Carl Barraco Jr.
Sam Hagan	Bill Ennen
Tim Keene	Buck Ward

Lee County Government Staff Present:

David Loveland, Director, Community Development
Anthony Rodriguez, Zoning Manager
Adam Mendez, Zoning
Dirk Danley, Jr., Zoning
Jessica Sulzer, Development Services Manager
Joe Adams, Assistant County Attorney
Deborah Carpenter, DCD Admin, Recorder

Outside Consultants/Members of the Public Present:

George Cingle
Duane Truitt, L26 Development LLC
Alexis Crespo, RVI Planning

CALL TO ORDER AND AFFIDAVIT:

The meeting was held in the Admin East Building, 2201 Second Street, Fort Myers, Florida. Mr. Randal Mercer, Chair called the meeting to order at 2:00 p.m.

Mr. Joe Adams, Assistant County Attorney confirmed the Affidavit of Publication was legally sufficient as to form and content and the meeting could proceed.

APPROVAL OF MINUTES – January 12, 2022

Ms. Tracy Hayden made a motion to approve the January 12, 2022 minutes as written. Mr. Bob Knight seconded. The motion was called and carried unanimously.

LDC AMENDMENTS

Mr. Mercer expressed his gratitude to staff for the inclusion of the summaries, staff comments and the comments from other committees in the proposed amendments. He found all very helpful.

NOISE ORDINANCE AMENDMENTS

Mr. Adam Mendez introduced the item and summarized the proposed amendment of Ordinance 14-18 as codified in Chapter 24½ Lee County Code of Ordinances. He reviewed the history of the noise ordinance which originated in 1982. The main focus of the proposed amendments establish maximum C-Weighted noise levels (dBC levels), correct the definition of “Pure Tone”, establish an alternate method of measuring decibel levels and provides the Sheriff’s office the ability to appoint a designee to conduct investigations. The Local Planning Agency (LPA) heard the proposed amendment on February 28th and provided recommendations to revise the sound measurements standards A(4) to reflect that ability to measure in accordance with proposed Table 2 and also supported renaming Table 2 from Alternate Sound Levels to Alternate Sounds Levels by Emitting Land Use for clarification purposes. The Sheriff’s office has been consulted and staff believes they have the equipment to carry out the C-weighted and Pure Tone readings. The LPA voted to find the proposed amendment consistent with the Lee Plan.

Mr. Bill deDeugd asked about cars and loud bass and Mr. Mendez confirmed that the proposed amendment was meant to capture those types of frequencies.

Mr. Knight asked whether other jurisdictions – Fort Myers Beach or Cape Coral as examples, had noise ordinances to this level. Mr. Mendez said that the County’s and Fort Myers Beach noise ordinances were the same, except that Fort Myers Beach does not have industrial/manufacturing that the County has but otherwise it is the same. The goal is regulatory consistency between jurisdictions.

Mr. George Cingle spoke in favor of the ordinance but against the inclusion of the county’s Table 2 which excludes “manufacturing or industrial from source property line standards”. He spoke of a manufacturing plant emitting loud noises and currently affecting 4 communities that has not been cited due to exemptions and exclusions as well as confusion on the part of Sheriff personnel. In his opinion the Table 2 exemption being considered for Manufacturing and Industrial noise sources must be removed so that the Table 2 criteria can be consistently enforced to provide equal protection under the law. He suggested that staff implement a noise ordinance amendment that is consistent with new residential growth policies that is easily enforceable, and fair and equitable to all without exemptions or exceptions. (a copy of his written comments is attached).

Mr. Mendez clarified that Table 2 as proposed is alternatively utilized at the discretion of the Sheriff’s office. Table 1 remains the primary table applicable and that table proposes C-Weighted maximum sound levels which will be applicable to all land uses, including manufacturing and industrial.

Mike Roeder questioned Mr. Cingle on the location of the manufacturing plant that was emitting the noise affecting his community and others. Mr. Cingle provided additional information (audio was inaudible) and discussion followed.

Mr. Mercer questioned the remedy if the Sheriff’s office failed to enforce the ordinance. Mr. Mendez replied that some kind of litigation to a higher court may be necessary in that case. Mr. Roepstorff stated that a homeowner always has the option of filing a civil action for a nuisance complaint regardless of county action.

Mr. Matt Roepstorff made a motion to approve the Noise Ordinance. Seconded by Ms.

Hayden. Hearing no further discussion, Mr. Mercer called the motion and it passed unanimously.

LDC Amendments

DESIGN STANDARDS FOR SINGLE AND TWO-FAMILY DWELLING UNITS

Mr. Anthony Rodriguez, Zoning Manager, introduced this item stating that the proposed amendment was intended to bring the Land Development Code into compliance with recent legislative pre-emptions regulating building design elements for single and two family dwelling units. The legislative action pre-empts local governments from regulating design elements with certain exceptions as outlined in the cover memorandum. The statutory amendments do not pre-empt local governments from enforcing or implementing zoning regulations, setbacks, building heights or lot coverage.

He stated the LDCAC and LPA had reviewed the amendments. The LPA pointed out two design illustrations that needed to be struck because they spoke to design elements, in particular within Page Park. Staff made the modification, removing the 2 figures and that will be presented to the Commissioners. LPA also questioned why the landscape standards for duplex and two family dwelling units were being deleted. Staff said these regulations have never been enforced and in order to do so, the County would have to hire additional staff with the required expertise to evaluate landscape plantings in compliance with this particular code section. Staff was recommending that this section be struck because it is not enforced.

Motion to approve by Mr. Roepstorff. Second by Ms. Hayden. Hearing no comments, Mr. Mercer called the question. The motion passed unanimously.

CASITAS WITHIN RECREATIONAL VEHICLE PLANNED DEVELOPMENTS (RVPDs)

Mr Rodriguez said casitas are essentially accessory buildings used as an extension of living area for occupants of a recreational vehicle on an RV lot. A zoning case was heard in 2020 and based on that, the Board directed staff to develop regulations to address the addition of casitas within the LDC as a permitted accessory use for certain recreational vehicle planned developments. Certain newer RVPDs have cabanas or coach cabanas as uses but these accessory structures do not allow kitchens or sleeping accommodations. Casitas include the ability to have a kitchen and bedroom. The proposed amendments establish locations for casitas as well as development regulations. In addition, they establish use and occupancy restrictions to avoid density related impacts associated with this type of dwelling unit. Also provided is a process by which an approved RVPD with cabana or coach cabana as a permitted use can essentially exchange that use for a casita through the amendment process rather than a public hearing process.

The LDCAC and LPA both had significant discussion about what the casitas should be, how big they should be and what the process should be for approval. The LDCAC recommended approval of the amendments but increased the 600 maximum size to 900 square feet. Both committees raised the question about the difference between transient and non-transient RV Parks. Mr. Rodriguez said the different is how long an RV can be placed on a lot. The LPA acknowledged that there is a need to establish a maximum living area and found that 900 SF was adequate for the use. The LDCAC asked if there is a definition of living area in the LDC. Staff originally thought that living area was captured by Florida Building Code, but upon further review it was not, so for that reason staff recommended incorporating a definition of living area in the LDC. THE LPA reviewed the definition and recommended that the use be further defined

as living space under air or climate controlled living space.

The LPA found the proposed amendments consistent with the Comp Plan, with the recommendation of modifying the definition of living area. That addition has been incorporated into the proposed amendments.

Ms. Alexis Crespo, RVI Planning, spoke on behalf of the developer of Laguna Caribe, an RVPD in Cypress Woods off Luckett Road. She had worked with staff on the language and thanked them for their effort. As a result of LDCAC comments, staff had increased the 600 square footage to 900 square feet, and although she would have preferred to let maximum lot coverage and setbacks of a lot govern how big these casitas can be, she understood staff wanted to limit the size. She thought the 900 square feet coupled with the definition of living area would be workable for the majority of buyers in the project. She asked staff to consider changing the language on Page 2 with respect to separation between the casita and the RV pad. They agreed casitas should be 10 feet from the neighboring lots but would like to have the language amended to clarify the casita separation is from the RV Pad and casitas on other lots.

Mr. Duane Truitt, the developer of Laguna Caribe spoke in support of the amendment as written with changes. He asked staff to clarify that only a single side setback would apply. He proposed not having a limit of square footage in the code. He spoke extensively about casitas in other parts of the country and Florida and that high end resorts have gone to much larger units. He said other jurisdictions rely solely on the PD process which allows site specific as well as market specific factors to be considered.

Mr. Mercer asked staff if there was a process for a cabana to be converted or retrofitted as a casita. Mr. Rodriguez said there is a process - a developer that has a PD with a cabana as a permitted use could come in for an administrative amendment to change out cabana to casita.

Mr. Knight was in favor of letting the site drive the size of the casitas. Mr Rodriguez said a concern was that at some point the accessory building ceases to be accessory and becomes a single family dwelling. Accessory Structures are defined as being subordinate and temporary to a principal use and the size is generally governed by the size of the living area of the principal structure. Another concern is that older RV parks that are not completely built out, can reduce the number of lots and add the casita use without considering the impacts to established RV lot owners elsewhere in the same Planned Development which becomes a compatibility issue.

Mr. Ink asked if a deviation from the 900 SF was possible. Mr. Rodriguez said yes, through a Public Hearing process.

Ms. Hayden asked Ms. Crespo for a clarification of her comments concerning the separations. Ms. Crespo said they were fine with the separation between casitas on different lots and her suggestion would be to add to the sentence "from the parking pad for recreational vehicles on other lots". Staff said that change would be incorporated.

Mr. Knight made a motion to add language to e(2)c: on other lots; and Strike / Delete e(2)a. Mr. Ian Moore seconded.

Mr. Roepstorff made the comment that he didn't see the difference between casita and a single family home.

Mr. Mercer called the question. By a show of hands, there were 4 opposed to the motion; there were 5, including the Chairman, in favor. The motion passed 5 to 4.

HYBRID WAREHOUSES

Mr. Mendez introduced the proposed amendments, saying that Hybrid Warehouse Use is the term used to define man caves, she sheds and RV condos, all of which have become popular. In addition to dead storage depository that characterize mini-warehouse development, individual units may be outfitted with interior improvements which create occupiable space for personal hobbies and recreation. As proposed, the use will be permitted by right or special exception in conventional zoning districts which currently permit mini-warehouse development in the same fashion, including the North Fort Myers commercial corridor where this use has been permitted through the special exception process. This use has been recognized in the Planned Development zoning process and these approvals were attached as examples to the agenda packet. The LDCAC and LPA approved the proposed amendments.

Mr. deDeugh asked about enforcement of violations and Mr. Mendez responded that enforcing what is behind closed doors is difficult, but he was not aware of any previous complaints.

Mr. Roeder asked about prohibited activities and Mr. Rodriguez responded that manufacturing on a commercial scale is prohibited, but woodworking as a hobby would be allowed. Mr. Roeder also asked about the differentiation between mini-warehouse and public warehouse. Mr. Rodriguez explained that a Mini-warehouse would be a classic storage facility where a person would drive up, open an overhead door and store their stuff. A public warehouse is defined as a facility that is accessible by an interior corridor and is climate controlled.

Ms. Hayden made the motion to approve as written. Seconded by Mr. Moore. The motion pass unanimously.

Mr. David Loveland, Community Development Director addressed the committee saying that these amendments would be going to the Board for public hearings in April and May. There are a number of Hearing Examiner-related provisions that will be brought to EROC's April meeting. Staff is still working on dock and shoreline industry changes. He said there are a number of other amendments that staff is working on as well.

There was no other business. **Mr. Mercer adjourned the meeting at approximately 3:40 p.m.**

The next meeting was tentatively scheduled for April 13, 2022.

Good afternoon!

I would like to first thank the Lee County Staff for their hard work on this amendment.

I have the following comments:

The Staff Note for **Section 24 ¼-3. Definitions**, states that incorporating C-weighted standards will result in “an outcome of regulatory consistency between neighboring jurisdictions, enforced by the same entity,” and I completely agree. However, in **Section 24 ¼-5. Prohibited acts**, Staff recommends that manufacturing and industry be exempt from Table 2, which contradicts their previous statement. I believe that regulatory consistency and equal protection under the law is key, which is why Fort Myers Beach, the City of Fort Myers, Cape Coral, and even Collier County **do not** preferentially treat manufacturing and industry noise sources. A manufacturing plant located in a Lee County industrial park should not be protected from prosecution if its noise output violates Table 2 Standards. Residents in four Lee County communities have experienced this first-hand: a plant emits loud noises every ten seconds that can be plainly heard from miles away, yet is not cited due to “exemptions” and “exclusions,” but more importantly, that cause confusion for Sheriff’s Office personnel. In my opinion, the Table 2 exemption for manufacturing and industrial noise sources must be removed so that the Table 2 criteria can be consistently enforced and provide equal protection under the law.

In conclusion, as the number of residential communities grow rapidly in unincorporated Lee County, it is a foregone conclusion that noise complaints will also increase at the same rate. I believe that noise pollution in this decade will become as big a problem as air and water pollution was in the 1970’s, especially as the distance between residences and businesses is reduced by the County’s progressive land development. It is now time for Lee County to address this fact, and implement a noise ordinance amendment that is: consistent with new residential growth policies, easily enforceable, and fair and equitable to all.

Thank you for your time and consideration.