

**MINUTES REPORT  
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE  
(EROC)  
Wednesday, April 13, 2022  
2:00 p.m.**

**Committee Members Present:**

Randal Mercer, Chairman	Jim Ink
Victor DuPont	Bob Knight
Mike Roeder	

**Excused / Absent:**

Ian Moore	Mike Reitmann
Matthew Roepstorff	Bill deDeugd
Carl Barraco Jr.	Tracy Hayden, Vice Chair
Sam Hagan	Bill Ennen
Tim Keene	Buck Ward

**Lee County Government Staff Present:**

David Loveland, Director, Community Development  
Anthony Rodriguez, Zoning Manager  
Joe Adams, Assistant County Attorney  
Deborah Carpenter, DCD Admin, Recorder

**Outside Consultants/Members of the Public Present:**

Steve Brodtkin

**CALL TO ORDER AND AFFIDAVIT:**

The meeting was held in the Board Chambers, 2120 Main 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 – March 9 2022**

**Mr. Mike Roeder made a motion to approve the March 9, 2022 minutes as written. Mr. Jim Ink seconded. The motion was called and carried unanimously.**

**LDC AMENDMENTS**

Mr. Rodriguez provided background information and an overview of the Hearing Examiner (HEX) Amendments. Community Development (DCD) staff, Hearing Examiner (HEX) and County Attorney Office (CAO) have been working for the past year to clarify the powers, duties and responsibilities of the HEX in relation to code enforcement and zoning. The amendments are intended to streamline the code where appropriate and to assure compliance with state statute. The LDCAC considered these amendments on March 11 and voted unanimously to approve them. The LPA considered the amendments on March 28<sup>th</sup> and had some notation language and comments which staff addressed. The vote, and comments from each of the

committees, was noted in the backup.

#### TOPIC 1: Code Enforcement Update

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amendments to LDC Chapter 2 to establish a Code Enforcement Agreement process and clarify enforcement penalties and fine mitigation.

Mr. Roeder asked about the code agreement and what happens if the violator needs more time to mitigate the violation. Mr. Rodriguez explained that the Code Enforcement Agreement is entered into between staff and the violator, it does not have to be submitted to the Hearing Examiner. If the violator needs more time than what the Code Enforcement Agreement established as a timeframe to abate the violation, an amendment to the agreement would need to be agreed upon between staff and the violator. Once the violation is abated, it is the responsibility of the violator to record the release.

**Motion to approve Topic 1 by Mr. Roeder; seconded by Mr. Victor DuPont. Mr. Mercer called the motion and it passed unanimously.**

#### **Mr. Mercer called for public comments.**

Mr. Steven Brodtkin, representing the Concerned Citizens of Bayshore Community, and Women for a Better Lee addressed the Committee on Topics #2 and #3. He opposed the HEX amendments as written, stating that it is a step backward for an open and transparent government and free speech rights. He said Lee County's rezoning process is already very restrictive due to the prohibition of communication between the Board of County Commissioners and Hearing Examiner. The proposed amendments further restrict public input by eliminating many Commissioners hearings. (complete text of comments attached)

#### TOPIC 2: Delegation of Decision-making to HEX for Conventional Rezoning Requests

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the HEX to provide the final decision in all conventional rezoning requests.

Mr. Mercer said it appeared that the HEX would be hearing many more cases than currently. Mr. Rodriguez clarified that the HEX hears all the cases now, but makes only a recommendation for consideration by the Board, then the case goes to the Board for the final decision.

Mr. Ink did not support this amendment. He liked the idea of streamlining but not when conventional rezonings become just a one stop process. His concern was that there could be changes to the schedule of uses or property regulations that could affect surrounding properties. He preferred to see it remain as a two-step process.

Mr. Roeder agreed with streamlining. He said he would like to see the Planned Development process addressed, as well as the ability for the public to communicate or coordinate with the

Board but neither of those topics are on this agenda. Mr. Roeder supported the amendment, stating that having the two step process could be a double edged sword with the possibility that a favorable decision could be reversed at that level. He felt the HEX setting gives the public more latitude whereas the Board is much more restrictive.

Mr. Knight agreed with the concept, liking the idea of streamlining and saving money, but was uncomfortable giving HEX the final authority.

Mr. Adams clarified that the election to go to the board is made by the applicant prior to the decision by the HEX. That was a concern for Mr. Ink and Mr. Knight - that the applicant can request to take the case to the Board, but the public cannot.

Mr. Roeder commented that three-fourths of the conventional zoning cases are non-controversial and allowing the HEX to make the final decision makes sense. He suggested adding a provision that the public can also request that the case go to the County Commission.

Mr. Ink wanted the 2 step process to remain. Mr. Roeder felt that allowing the HEX to make the decision for those non-controversial cases saves time and money.

Mr. Rodriguez clarified that this topic relates to conventional rezoning only, going from one established district to another established district. There are no conditions to debate through the hearing process. Development must abide by the schedule of uses and property regulations in place at the time of development. These types of rezonings are not often denied and generally have very limited or no public involvement.

Mr. Rodriguez said that as a result of LPA's response, language was added [(d)(1)e.] that the applicant must make the request for a second public hearing before the Board at the conclusion of the HEX hearing or any time before that.

Mr. Knight made a motion to accept the amendments as written with the suggestions of previous committee comments incorporated. No second. The motion failed.

**Mr. Roeder made a motion to accept the amendments with the addition that a member of the public could also request a public hearing before the Board of County Commissioners (page 4, (d)(1)e). Mr. Victor Dupont seconded.**

Mr. Adams clarified that the request would need to be made on the record at the HEX hearing in order to elect that option.

**Mr. Mercer called the motion. The motion carried (3 to 1) with Mr. Ink dissenting.**

### TOPIC 3: Delegation of Decision-making to HEX for PD/PUD Amendments

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the HEX to provide the final decision for certain planned developments and amendments to planned unit developments that are not subject to separate ordinance.

**Mr. Roeder made a motion to accept the amendments with the addition that a member of the public could also request a public hearing before the Board of County Commissioners [page 6 of 10, (d)(1)e.5.]. Mr. Victor Dupont seconded.**

**Mr. Mercer called the motion. The motion carried (3 to 1) with Mr. Ink dissenting.**

TOPIC 4: Changes to HEX Recommendations on Zoning Matters

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to establish a procedure for the HEX to consider requests for changes to HEX-recommended conditions of approval in advance of the BCC hearing. Currently drafted to require written submission to the HEX, with a copy to staff, at least 14 working days prior to the scheduled BCC public hearing date.

Mr. Roeder asked if the response would be provided to all parties. Mr. Rodriguez confirmed that the correspondence would be shared with any parties of interest associated with the zoning case.

Mr. Ink was in favor of this amendment, which provides an opportunity to clarify items or issues before going to the Board.

**Motion to approve by Mr. Knight. Seconded by Mr. Roeder. Mr. Mercer called the motion and the motion carried unanimously.**

TOPICS 5: HEX Related amendments to DRIs:

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to align with state statutes.

**Motion to approve by Mr. Knight. Seconded by Mr. Ink. Mr. Mercer called the motion and it carried unanimously.**

TOPIC 6: Administrative Appeals to HEX

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to consolidate language regarding the authority of the HEX to hear appeals in LDC Section 34-145. Establish procedures for filing, standing to appeal, acceptance of appeals, nature of proceedings, considerations, and nature of relief.

Mr. Roeder questioned the reference to Timberland and Tiburon DRIs on page 10. Mr. Rodriguez confirmed that this is language already in the code and he could not speak to its significance.

Mr. Roeder asked if an applicant wins an appeal if the application fee is refunded. Mr.

Rodriguez believed that was the case.

**Motion to approve Mr. Ink. Seconded by Mr. Knight. Mr. Mercer called the motion; the motion carried unanimously.**

Mr. Rodriguez explained that the next two topics, #7 and #8, came about after discussion with the Board in December of 2021. The Board directed staff to prepare some amendments to address the Board's concern relative to these topics.

TOPIC 7: Participation of Hearing Examiner at Board of County Commissioner (BoCC) Hearings on Zoning Matters.

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the Hearing Examiner to participate in hearings before the BoCC on zoning matters. Intended to remove the need for staff or the applicant to interpret a Hearing Examiner position on a particular aspect of the recommendation.

Mr. Mercer summarized his understanding of the amendment: that HEX is allowed to attend BoCC hearings; that HEX does not give a presentation; that HEX is able to answer questions from the BoCC, which Mr. Rodriguez clarified is limited to the evidence and testimony presented at the HEX. Current rules apply, cannot introduce new evidence, cannot provide additional testimony.

**Motion to accept as written by Mr. Roeder. Seconded by Mr. DuPont. Mr. Mercer called the motion and it passed unanimously.**

TOPIC 8: Clarification of Language Prohibiting Unauthorized Communications.

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend the LDC to allow the County Commissioners to have informational discussions with county staff including the County Attorney's office, regarding zoning cases, as needed.

This is intended for the Board to gather information to streamline the public hearing process.

Mr. Mercer asked if this communication would be part of the public record and discussion followed. Written communication is part of a public record subject to Sunshine Laws. Verbal conversations are not part of the public record and this would include Commissioner briefings. Mr. Adams clarified the distinction between the Sunshine Law and Ex Parte Communication in quasi-judicial proceedings.

Mr. Knight had a concern that when a commissioner wanted information that he could call and speak to anyone but there was no record of the conversation. Mr. Knight felt that the request for information should go through the Department manager who then would relay the request to appropriate staff.

Mr Ink did have some concern about the flow of information, but could justify the concept of going directly to staff since staff prepared the staff report. Mr. Roeder would prefer that communications be in writing so it can be made public.

**Mr. Ink made a motion to approve the amendment. Seconded by Mr. DuPont.**

Mr. Roeder would rather restrict this to written communication, that oral off the record communication not be allowed.

**Mr. Ink revised the motion to approve the amendment with Mr. Roeder's comment added. Mr. Mercer called the motion and it carried unanimously.**

TOPIC 9: Clarification of Language regarding administrative interpretations

Mr. Rodriguez reviewed the specifics of the amendments along with the Powerpoint presentation.

Amend LDC Section 2-1 to clarify that requests for Interpretation regarding a specific piece of property may only be sought by the property owner or registered agent of the property in question.

There are third parties that are utilizing the Administrative Interpretation process in an attempt to appeal an administrative decision by staff. The Hearing Examiner does not have the right to consider that as part of an appeal, but that does not prevent someone from filing the appeal. This requires staff time and effort to respond to an appeal that the HEX has no authority to hear in any case.

**Motion to accept the amendment as written by Mr. Knight. Seconded by Mr. Ink. The motion carried unanimously.**

Mr. Rodriguez stated that LDC amendments related to Dock and Shoreline will be discussed at the next meeting scheduled for May 11, 2022.

There was no further business. **Mr. Mercer adjourned the meeting at approximately 3:20 p.m.**