

**MINUTES REPORT
LOCAL PLANNING AGENCY
APRIL 25, 2022**

MEMBERS PRESENT:

Ray Blacksmith
Dustin Gardner
James Ink (Chair)

Alicia Olivo
Stan Stouder (Vice Chair)
Henry Zuba

MEMBERS ABSENT:

Don Schrotenboer

STAFF PRESENT:

Nathan Beals, Utilities
Steve Boutelle, Natural Resources
Brandon Dunn, Planning
Lesli Haynes, Natural Resources
Dave Loveland, DCD Director
Adam Mendez, Zoning

Janet Miller, Recording Secretary
Anthony Rodriguez, Zoning Manager
Mikki Rozdolski, Planning Manager
Becky Sweigert, Planning
Amanda Swindle, Assistant County Attorney

Agenda Item 1 – Call to Order, Review of Affidavit of Publication/Pledge of Allegiance

Mr. Ink, Chair, called the meeting to order at 9:00 a.m.

Ms. Swindle, Assistant County Attorney, certified the affidavit of publication and stated it was legally sufficient as to form and content.

Agenda Item 2 – Public Forum - None

Agenda Item 3 – Approval of Minutes – March 28, 2022

Mr. Stouder made a motion to approve the March 28, 2022 meeting minutes, seconded by Mr. Blacksmith. The motion was called and passed 6-0.

For the audio recordings for today's meeting, type in the following link.

<http://www.leegov.com/dcd/committees/committeesearch>

Agenda Item 4 – Lee Plan Amendments

- A. CPA2022-00004 Update Map 3-A: Cost Feasible Roadway Projects
Amend Map 3-A of the Lee Plan's Transportation Map Series to include 4-laning of Corkscrew Road from Alico Road to the Verdana Village entrance. This update is needed to maintain consistency with the Lee County Metropolitan Planning Organization 2045 Long Range Transportation Plan.

Mr. Dunn reviewed the staff report and recommendations along with a PowerPoint presentation.

Mr. Ink opened this item for public comment. No members of the public wished to comment, so the public comment segment was closed.

Mr. Blacksmith made a motion to recommend transmittal of CPA2022-00004 Update Map 3-A: Cost Feasible Roadway Projects, seconded by Mr. Gardner. The motion was called and passed 6-0.

Agenda Item 5 – Land Development Code Amendments

A. Dock and Shoreline Structures

Amend the dock and shoreline regulations contained in Lee County Land Development Code Chapter 26, with consideration to current industry trends, the Lee Plan, and the Manatee Protection Plan (MPP).

Mr. Mendez reviewed these amendments along with a PowerPoint presentation. He noted there were representatives from the marine industry who would like to speak under public comment.

Mr. Zuba complimented staff on what he considered to be a comprehensive document. He asked what the catalyst was in presenting these amendments.

Mr. Mendez stated that the dock and shoreline regulations have not been amended substantively in a long time. This is a unique situation because this effort was originally spearheaded by the marine industry. Staff began working with the marine industry in August of 2020 during COVID to begin the earliest form of this draft. It has materialized into what it is today.

Mr. Zuba asked how staff handles a situation where someone's request conflicts with the Manatee Protection Plan (MPP) or other state regulations.

Mr. Mendez stated that the Manatee Protection Plan is required by the State, so there would not be a conflict in that instance. If the County has more stringent regulations on some environmental matter, that is the County's jurisdiction. The State has their own protections, their aquatic preserves, protected areas, and their standards for dock and shoreline structures. The County is able to enforce their own based on their own unique interests at a local level. Therefore, Mr. Mendez believed the County would prevail in most of those situations where it is not distinctly contrary to what the State requires.

Mr. Zuba asked if there were other areas where the county conflicts with state regulations.

Mr. Mendez stated there were none that he was aware of.

Mr. Blacksmith referred to Page 18 (a) (2) where it states, *"The rock must be a minimum average size of 12 inches in diameter."* He relayed a situation that occurred on his property when his rip rap shoreline was damaged due to Hurricane Irma. He explained that his engineer came up with the detail on the rip rap. For example, 50% of the material being replaced had to be between 8 and 12 inches. The other 50% had to be between 4 to 8 inches in size. Another big component for the rip rap stone, especially with the shoreline, was the gravity of the material. It had to be dense enough to be able to stay in place. Without a requirement for a specific gravity, you might end up using an incorrect type of rock. He asked why the County was specifying 12 inches without going into more detail. He felt the verbiage was incomplete.

Mr. Mendez stated staff worked with environmental staff and Natural Resources to craft some of the language. He did not have an immediate response on the actual rationale behind the language. During the remainder of the meeting, staff might be able to provide a response. If not, staff will annotate and respond accordingly.

Mr. Loveland stated the language referenced by Mr. Blacksmith was old language that had been in the Land Development Code (LDC) for a long time. It is also based on comprehensive plan amendment policy standards, which is why the language has remained unchanged for a long time.

Mr. Blacksmith felt it would be wise for staff to revisit that section. If the County is going to specify a size, there needs to be more information, something more comprehensive.

Mr. Ink stated that as part of this document, there was some discussion on a benthic species survey assessment versus a bathymetric survey. It seemed to him that staff preferred the benthic species survey.

Mr. Mendez stated that was correct. In many of the exceedances that are now offered by this draft, staff wants to ensure that the exceedances are not creating further impacts to benthic habitat. In order to justify that, staff needs a benthic species survey. The other survey (bathymetric survey) is required by the State and pertains to the depth requirements not so much what is going on in the benthic habitat. Also, the bathymetric survey can be conducted any time during the year. However, there is a portion of the year, in our geographic area, where you will not find much presence of benthic species as it is not the growing season.

Mr. Ink asked if the benthic survey would also be required for single family docks.

Mr. Mendez stated there are instances where it might be if the applicant is asking for an exceedance. If it is a *"by right"* situation, it is not required. This is only in those instances where someone is asking for more than what is allowed by code. In an instance such as that, they must demonstrate that the exceedance does not create a further impact that staff must evaluate.

Mr. Ink asked staff to give an example of something that would be more than what is allowed by code.

Mr. Mendez stated that someone might want to go in exceedance of 200 feet out into a waterbody with a dock. They might be allowed to do this under certain administrative view criteria. Part of that criteria is that the exceedance is either necessary to justify that you are trying to avoid impacting benthic habitat or that the exceedance itself will not create an adverse impact on environmental conditions out there further than the navigable channel.

Mr. Ink asked for clarification that if someone was putting in a single family dock with two slips with a 160 square foot terminal platform with the correct water depth, they will not be required to submit a benthic survey.

Mr. Mendez stated that was correct. They will not be required to produce a benthic survey. The only time it is not required is in *"by right"* situations.

Mr. Ink asked when the Manatee Protection Plan was last updated.

Mr. Steve Boutelle from Natural Resources stated the Manatee Protection Plan has not been revised since it was originally adopted back in 2005. Staff has had conversations with the Fish and Wildlife Conservation Commission. The Manatee Protection Plan was developed and adopted based on a requirement that came from the Fish and Wildlife Commission. Although there is language in their Statute that discusses updates, it has not taken place because it has not been a priority for them.

Mr. Ink asked if they update the scoring criteria in the Plan or still use the 2004 numbers.

Mr. Boutelle stated that one of the reasons the Fish and Wildlife Commission may not be making it a priority to update the Plan is because when Lee County does the scoring criteria for boats, slips, etc., they use the best available data. The data sets are dynamic and have changed over that period of evaluation whereas many of the other counties have adopted a set of maps and as conditions changed, updating those maps are more of a priority. That being said, the Manatee surveys used for tracking are old. This is why staff has been asking the Fish and Wildlife Commission to consider updating them. Staff has expressed concern to the Fish and Wildlife Commission because they are no longer prioritizing it to do a necropsy. The necropsy is used to determine the cause of death on every Manatee carcass that is recovered. From this point going forward, staff is not confident that we will have a full and complete 10-year data set that sufficiently monitors mortality counts. The Fish and Wildlife Commission has indicated it is a resource issue. They do not have the necessary resources especially with the unusual mortality rate on the east coast. Their resources have been depleted. Right now, they can verify that a Manatee has been killed, but they do not know why. The mortality rate has increased significantly over the last two years. Mr. Boutelle felt the outdated Manatee surveys would eventually cause problems with the methodology. Although staff has expressed their concerns with the Fish and Wildlife Commission, it has not been resolved.

Mr. Ink stated that he agreed with staff in not wanting Manatee protection language in the Land Development Code, but it is mentioned in these amendments, so in a way they go “*hand in hand*.” If one set is askew, it might be best if a recommendation is made to the Board of County Commissioners that they be more proactive in getting the Manatee Protection Plan updated.

Mr. Zuba agreed with Mr. Ink’s comments and stated it would be his suggestion as well.

Mr. Ink referred to mention of “*paddlecrafts*.” He asked if that would or would not require a boating slip.

Mr. Mendez referred to the definitions section. Paddlecrafts do not constitute a boating slip.

It was determined that Mr. Ink was referring to Section 26-73 – Fishing Piers, observation decks or paddlecraft structures. Item (1)(b) states, “*Provide access walkways and terminal platforms at five feet above mean high water; except that the terminal end of a paddlecraft structure used for launching paddlecrafts may be constructed lower than five feet above mean high water.*”

Mr. Mendez stated this particular provision in the Land Development Code is for areas where there is insufficient mooring depth, so it is for a different instance. They are not considered boat slips by definition. He reviewed that section further with the LPA.

Mr. Ink asked for confirmation that it would be the reverse of that if it is a fishing pier with insufficient water depth and they go lower for a kayak launch. It would be a code enforcement issue.

Mr. Mendez stated that was correct.

Mr. Stouder stated he has seen paddlecrafts that are motorized with petroleum motors or battery operated motors. He asked if that should be delineated in the definitions. He felt those are non-threatening types of propulsion.

Mr. Mendez stated staff would revisit this issue and clarify that.

Mr. Ink stated he also saw language where we are doing something in a natural waterbody and we are now changing it to aquatic preserve only.

Mr. Mendez stated that was correct. He referred the LPA to Figure 26-1 on Page 11 of 25, which has been in the Land Development Code since the late 1980s. At that time, the County took the most stringent stance on their single family dock standards. They adopted the State's aquatic preserve standards county-wide. He pulled up a slide that showed where the aquatic preserves are located in the county. He noted there were a lot of natural waterbodies that are not necessarily in state designated aquatic preserves. He reviewed it with the LPA. Mr. Mendez stated that the marine industry has made it clear that they are seeking more flexibility in non-aquatic preserves so they are not bound to the aquatic preserve standard. It is not enforced by the State in non-aquatic areas.

Mr. Ink referred to earlier comments by staff that what is being proposed is more stringent in certain areas than the State guidelines.

Mr. Mendez stated this draft did not propose anything more stringent. Lee County has special interests that they are able to regulate above and beyond the State in areas where they are not explicitly inconsistent with the State. There are many flexibilities built into these amendments. Lee County has a Lee Plan they must comply with, which is more stringent in some instances, but nothing in this draft is proposed to be more stringent. There is some language that is staying in here that might be more stringent standards than what the State enforces.

Mr. Ink believed the marine industry might say that we are more stringent. If it is determined that what staff is requesting is more stringent, he asked who guides that (i.e. staff or the County Commissioners).

Mr. Mendez stated staff's approach is to review this to see where improvements can be made by refining the language and addressing inconsistencies. In some cases, it may seem like there are regulations that are more stringent, but that is not what is taking place here in totality.

Mr. Ink expressed concern over only allowing two slips for single family. He asked if there were any existing cases that are currently legal, but would become non-conforming as a result of these amendments.

Mr. Mendez stated that Chapter 26 had a non-conforming section. Anyone who currently has a County issued permit and was able to obtain more than two slips or was able to obtain a private single family dock in an artificial canal without a setback will be protected (grandfathered in).

Mr. Ink stated this would mean that some property values could be more than their neighbors because they have additional slips.

Mr. Mendez stated that was correct because their slips would be grandfathered in.

Mr. Loveland referred to Mr. Ink's question on who is guiding this (staff or Commissioners). He noted that the County has had these regulations in place for a long time. The marine industry approached staff about updating the regulations. Staff has taken input from the marine industry on multiple occasions throughout this process. One of the driving forces was consistency. The industry was concerned that we were inconsistent with the State and some of the other local jurisdictions. He noted that Lee County also must be consistent with the Manatee Protection Plan and our county comprehensive plan policies which is the driving force behind most of what is in the language.

Mr. Stouder referred to the LDCAC/Industry Comment on Page 18 of 25, which reads, “*Consider regulations in natural waterbodies which permit entombing old sea wall, flexibility to use different product to permit an upgrade of seawall material.*” He asked staff to expand on that.

Mr. Mendez stated the marine industry is interested in a couple of scenarios. Currently, if a property is located by a natural waterbody, a property owner can replace an existing seawall by removing it and replacing it with the same material. The industry is requesting: 1) that they be able to replace it with a different material (something more durable) in case it was built with some inferior material; and, 2) allow a product called “*vital seawall*” up to 18 inches in front of an existing seawall instead of removing the seawall and placing the new material directly in line with where it was before without any protrusion. Mr. Mendez stated it was staff’s position that this item should be considered separately from this draft because staff does not have data to analyze yet. Staff must consider the impact overall county-wide. Therefore, it is not proposed in this draft, but is up for discussion.

Mr. Stouder stated he could foresee situations where what they are requesting would be beneficial.

Mr. Ink pointed out that staff has been working on this since August 2020. He asked if staff had a timetable for looking into this further. Since, staff has been working on this for two years, he was not sure what more they would need.

Mr. Mendez stated that the aspect of seawalls has not been talked about for two years. Staff has primarily worked with the marine industry regarding dock and shoreline structures such as single family docking facilities and boat houses. Those issues have been the primary catalyst to this. Staff will be gathering more input from the marine industry regarding the seawalls and completing research before bringing it before all appropriate committees.

Mr. Ink felt it would be better to allow a seawall panel to be put in front of an existing seawall because it would be fairly simple and environmentally far less impacting than digging out a concrete seawall and putting a concrete seawall back in.

Mr. Mendez stated that although he understood Mr. Ink’s point, there are other things staff needs to consider including encroaching further into a navigable canal. If someone has a 50-foot wide canal and everyone is building 18 inches waterward, it will shrink the canal. Therefore, staff is not willing to rush something like that through and include it in these amendments. Staff is not ready to take a position on this issue yet.

Ms. Sweigert stated there was also concern by the LDCAC in the last minute addition of the seawall because of consistency with the Lee Plan. There are some areas of the Lee Plan that refers to seawalls, so there is time to evaluate that fully to make sure we remain consistent with those policies. Staff has not had the ability to evaluate it in the quick time between the LDCAC and this meeting.

Mr. Stouder referred to (d)(3) on Page 19 of 25, which reads, “*Mangroves or other approved wetland vegetation must be planted three feet on center in compliance with section 26-77(b)(2) for added shoreline stabilization and ecological benefit within the riprap.*” He asked what those might be and how they might be more compatible than mangroves. He also referred to (b) under Section 26-76, which reads, “*Methods to control turbidity and dispose of dredging spoil must be indicated.*” Mr. Stouder stated he could see an instance where several lots are cleared and as part of that renovation the canals are dredged and the canal spoils are placed on those lots. From an engineering side of this, if those dredging spoils would be used in proximity for a financially viable use, it would reduce truck traffic and it would

take some reprieve out of the demand for fill and it would cause there to be a financial incentive for the private sector to make these canals and backfill more viable.

Mr. Ink stated he had personal experience that when dredging occurs and the material is piled onto the lots, many calls come in from people in the neighborhood wanting the material because of the price. The spoils are usable. Mr. Ink stated he has done this on a couple of his projects and is comfortable with that type of process.

Mr. Ink opened this item for public comment.

Mr. Hans Wilson made the following comments:

- He suggested staff exclude single family docks from the Manatee Protection Plan and make them independent. If staff wants to define all of the residential single family docks as being no more than two slips, regardless of the waterbody, then staff should just say that, but not tie it back to the County's Manatee Protection Plan. Although single family docks are very well defined in the County's Manatee Protection Plan, there is a gray area whereby if you have less than five slips you are not subject to the marine facilities side of it. It causes confusion on the Manatee Protection Plan side. His suggestion is to exclude any reference to it and make it stand alone relative to staff's definition of two slips per single family dock.
- He referred to (f)(2) on Page 13 of 25 where there is discussion of minimum water depths particularly where there is a requirement to have a minimum water depth of at least four feet within mooring areas, turning basins, and ingress and egress pathways. He felt staff needed to better define ingress and egress. Mr. Wilson stated he knew of several facilities, for instance, up Ten Mile Canal and the headwaters of Mullock Creek where you might have four-feet of water depth at that docking facility. However, when you go down from the headwaters of Mullock Creek, you have to go over shallow area that has less than four-feet. If the County uses the criteria of four-feet, they basically remove anyone that is upstream of that shallow crossing area in Mullock Creek out of the equation of being able to do docking facilities. He stated the same applies to Jug Creek. He gave other examples of situations that occur in Jug Creek. He felt that if the County uses that as their limitation on ingress/egress, it could have significant ramifications. He suggested the County tie it to what would be the normal channel or course of travel that everyone else in the area is using because that is how far they go to their ingress/egress.
- Although this is not the correct venue for it, he was in favor of continuing conversations regarding seawalls. There is currently a distinction made between artificial waterbodies and natural waterbodies. However, to him, it should not make a difference because the artificial waterbodies flow and exchange in time with the natural waterbodies. They should merely be considered waterways. With an artificial waterbody, the Land Development Code allows someone to replace a seawall within 12 inches of an existing seawall. He felt there should be no problem to also put a new seawall in front of an old seawall on a natural waterbody.
- Lastly, Mr. Wilson stated it would be his preference to replace seawalls with rip rap because it is a better approach habitat wise. It makes better sense because you are adding additional strength to the project even though the engineers have not calculated for it and it is an easier process for contractors to build it versus having to pull out the old seawall, take the product out of the neighborhood by truck, and bring in the new seawall. To him, this ordinance should stand alone independent of the County's Manatee Protection Plan.

Mr. Stokes reviewed some of the positive changes that have resulted from these amendments and complimented staff on their efforts in working with the marine industry. He stated the following:

- He was not in favor of the regulations for side setbacks. Mr. Stokes felt there was nothing that could be written into the code that would prevent complaints from neighbors. At some point, you would have a view corridor and a perceived navigation path from a neighbor that is not going to look like what is being built. It is confusing to an average homeowner. He felt the County should allow the owner of the property to determine their own navigability and the ingress/egress they need for their vessel. They should be able to ascertain the water current, wind direction, how many motors to have, etc. Full discretion should be up to the property owner to determine if their ingress or egress is sufficient for their needs.
- He reviewed the side setbacks for other municipalities: City of Cape Coral (12-foot), City of Sanibel (15-foot), City of Fort Myers (side setback located in the center 1/3 of the property), and Fort Myers Beach (5-Foot). Mr. Stokes noted that they deal with neighbor concerns no matter what the side setback is. If someone works hard to purchase a waterfront property, they should be able to maximize their space and ascertain their own ingress/egress. He urged the County not to put anything from a side setback perspective in the Land Development Code that is not currently there already.
- Regarding the seawall, Mr. Stokes showed some PowerPoint slides that show the process for how seawalls get replaced. He reviewed it with staff and the LPA. He noted that everything he reviewed with them on the slides can be done on artificial waterways. The marine industry is asking for it to be allowed on natural waterways as well. He hoped this would be addressed as soon as possible.
- Regarding water depths, he noted there are many places in Lee County that have shallow water up against the shore line. There are many vessels in Lee County that do not create a big draft. We should allow people to have smaller crafts in those areas and still protect our resources. Right now, staff is proposing two slips in a natural waterway. Mr. Stokes noted he does not receive calls from anyone about how many slips someone has on an artificial waterway. He did not see what we were accomplishing by limiting it to two slips in an artificial waterway because it is not a common complaint.
- With the issue of two slips, it means that a resident cannot have a pair of jet skis and a family boat, which is common place. He strongly suggested the County leave the number of slips for single family as is and not limit it to two slips and he also did not want to see natural waterways restricted to two slips unless it is an aquatic preserve, in which case, the Department of Environmental Protection would be involved anyway.

No other members of the public wished to speak, so the public comment segment was closed.

Mr. Ink stated he still had an issue with the issue of seawalls not being able to move forward. Although there may be something in the Lee Plan that restricts it, staff should still evaluate that part. He also felt the LPA should make a recommendation to the Board of County Commissioners to be more proactive in updating a 20 year old Manatee Protection Plan. Although it may not be in favor of the marine industry, at least it will be correct.

Mr. Zuba referred to staff's previous comments on why they need more time to study the seawall issue. Therefore, he was not in favor of the seawall issue being part of a motion today.

Mr. Ink felt staff should evaluate it further. He was concerned with the economic and environmental impact. For instance, Mr. Wilson noted there were seawalls that are asbestos concrete that need to be replaced.

Mr. Loveland noted that these amendments are not a one-time deal. Staff conducts Land Development Code updates throughout the year. Staff can move forward with what they have and come back to the committees regarding seawalls after more research is done.

Questions and answers ensued between the LPA, Mr. Stokes, and staff regarding vinyl panels, the 3-foot below mean water minimum standard, side setbacks, and ingress/egress.

Mr. Gardner asked the marine industry representatives if they felt there were any amendments being proposed today that would create delays

Mr. Stokes stated he did not see anything in the proposed changes that would hinder the turnaround time from the review perspective. He felt Lee County had much faster turnaround times than other municipalities. Often times, the delays are at the Federal and State level. He reiterated comments made earlier on why he objected to side setback regulations being included in the regulations. Although there are bad dock designs, it is at the expense of the owner to correct it.

Mr. Blacksmith did not feel it made sense to build something that could eventually not work. Why limit what the abutting property owner can do with their property, thereby causing a fight?

Mr. Stokes felt the process works fine as it is. Although not everyone likes it, that will not improve with a side setback. There will still be complaints. He noted that the Land Development Code mentions "*protecting navigability*." With all due respect to staff, he felt the interpretation of that is a "*hit or miss*." The navigability of a dock means it does not project out into the waterway to a point that it prevents navigation up and down a canal. It is not about someone's individual ingress/egress slip. That is different from navigation.

Mr. Ink stated he agreed with Mr. Stokes in some regards, but he recognizes that we need some sort of code requirement. There was mention of 25, 15, and 10 foot setbacks. He felt the simplest method was to use what the side setback is for a lot. It is simple and less than the 25 feet that the State has. He reiterated that he felt staff needed to make it a priority to look into the seawall issue and that the County needs to be more proactive in updating the Manatee Protection Plan.

Mr. Stouder made a motion to find that staff's report is consistent with the Lee Plan as presented with the following caveats: 1) there needs to be a distance attached to the ingress/egress of a dock; 2) that the single family home docks will not be subject to the Manatee Protection Plan; 3) that the minimum draft be less than 3-feet for lots that are 80 feet or less in width; 4) that the Manatee Protection Plan be given accelerated scrutiny due to its aging; 5) that within the next six months staff and the industry come up with some updated seawall language for committee consideration; and, 6) that the proposal of a paddle craft should include battery operated propulsion, seconded by Mr. Zuba. The motion was called and passed 6-0.

Agenda Item 7 – Other Business - None

Agenda Item 8 – Adjournment

Staff stated there was a chance the May LPA meeting would be cancelled. There are no Land Development Code amendments scheduled for next month and they did not believe there were any comprehensive plan amendments.

The next Local Planning Agency meeting is scheduled for Monday, June 27, 2022, at 9:00 a.m.

The meeting adjourned at 10:38 a.m.