

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

**Tuesday, April 9, 2024
9:00 a.m.**

Committee Members Present:

Carl Barraco, Jr.
Bill De Deugd
Sam Hagan

Tracy Hayden, Vice-Chair
Bob Knight
Randal Mercer, Chairman

Excused / Absent:

Victor DuPont
David Gallaher
Tim Keene

Ian Moore
Michael Reitmann
Mike Roeder

Lee County Staff Present:

Joe Adams, Assistant County Attorney
Dirk Danley, Jr., Principal Planner
Adam Mendez, DCD, Zoning Senior Planner
Janet Miller, DCD Administration

Anthony Rodriguez, Zoning Manager
Brianna Schroeder, Zoning
Tracy Toussaint, DCD Administration

CALL TO ORDER AND AFFIDAVIT:

Mr. Randal Mercer, Chairman, called the meeting to order at 9:00 a.m. The meeting was held in the Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida, Conference Room 1B. Mr. Mercer stated we have a quorum and asked Mr. Joe Adams, Assistant County Attorney if we had a legal meeting.

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

APPROVAL OF MINUTES – November 8, 2023

Mr. Mercer asked if anyone had any comments or changes to the Minutes from the November 8, 2023 meeting. There were none. He asked if there was a motion to approve.

Ms. Tracy Hayden made a motion to approve the November 8, 2023 minutes as written, Mr. Hagan seconded. The motion was called and passed unanimously.

Agenda Item 3 – Land Development Code Amendments - A. Micro-Breweries, Wineries, and Distilleries

Mr. Dirk Danley, Jr., Principal Planner, gave an overview of the amendments.

Mr. Knight referred to the definition of Microbrewery, -distillery, or -winery on the bottom of Page 2 of 13 and asked how staff came up with the quantity of 15,000 barrels per year.

Mr. Danley, Jr. stated staff used the state licensing requirements and explained there were two different types. There is a Rider to the 2COP which is a beer and wine license for consumption that allows for some consumption. More than 15,000 barrels falls under an "Industrial use." This is the formula staff used so that they would not trip the threshold from a state regulatory standpoint.

Mr. Hagan referred to the middle of Page 2 where it states, *"**Use must not be located closer than 500 feet, measured in a straight line from any public school or charter school; childcare center; park, playground, or public recreation facility; place of worship or religious facility; cultural center, or hospital."* He asked if there was a definition of a "playground" in the Land Development Code. Mr. Hagan noted that he had been to breweries where they had a playground so that there was a play area for children while their parents were drinking beer.

Mr. Danley, Jr. stated staff would research that. He noted that most of the verbiage mirrors the current Consumption on Premises regulations. He did not believe "playground" is a defined term. To him, the closest definition would be "recreation facility." Mr. Danley did not recommend capturing all the recreation facility uses. For instance, it would not be staff's preference to have a golf course and playground in the same place. He noted that staff would review it further to see if there was a way to make the verbiage clearer. He acknowledged there are places such as Backyard Social in Fort Myers where it has accessory recreational components. They were not included in the separation requirements because the property is under unified ownership.

Mr. Barraco, Jr. asked if staff could add some language that if someone is under unified ownership then this section does not apply to them.

Ms. Hayden referred to Paragraph (3) on the top of Page 10 of 13 under Sec. 34-1263 and asked if brewpub should be added to this section.

Mr. Danley, Jr. stated the intent would be to allow for a small manufacturing company to have a six pack for sale on their way out. He explained it is a tricky situation because a brewpub is specifically not intended to distribute in a wholesale sense. For instance, if Fort Myers Brewery was trying to sell a couple of kegs to Millennial Brewing Company. The intention is not to distribute between those. However, if someone visits Millennial Brewing Company and likes what they produced, they may want to leave with a six pack. Staff wanted to allow that option as a clearly incidental component. He explained it is a fine line because staff it not intending "distribution" in a wholesale sense for brewpubs, but they still want to allow the option of having the sale of alcoholic beverages for consumption off-site.

Mr. Knight referred to Item (c) which states, *"Only alcoholic beverages in original factory-sealed or site sealed containers shall be permitted on-site."* He noted that several microbreweries do their own canning. In addition they have beer growlers. He noted there are times that he will bring his own growler to a brewery and have them fill it up. He asked if this would still be something a customer could do or if this regulation would cause a challenge to where someone could say it is not site sealed.

Mr. Danley, Jr. stated the situation Mr. Knight described is why staff added the site sealed component to it. He noted there was a state requirement in place, so staff wanted to make sure a microbrewery was not doing something illegal where someone could say it was not site sealed.

Mr. Knight referred to the definition of brewpub under Sec. 34-2020 Required Parking Spaces on Page 12 of 13. He noted that the definition had something to do with a restaurant. He asked if this would change anything for a microbrewery. Mr. Knight stated it was very popular for a microbrewery to have a food truck on-site. The food is brought into the microbrewery for customers, so the customers are eating inside the facility. It is a tasting room, but it is similar to a restaurant. He asked if this would cause them to fall into a restaurant category or if they could maintain the microbrewery.

Mr. Danley, Jr. stated there is no prohibition for a bar and cocktail lounge to serve food. It becomes a matter of whether a business is more of a restaurant or a bar. Most places have some food options available for customers, but they do not serve the food all the time. The bar remains open all day, but they may only serve food from 4:00 p.m. to 9:00 p.m. The intent of these regulations is not to push microbreweries and distilleries into a restaurant category.

Mr. Knight made a motion to accept the Land Development Code amendments with a change that a playground can be allowed within the boundaries of the existing microbrewery property, seconded by Mr. Barraco. The motion was called and passed unanimously.

Agenda Item 3 – Land Development Code Amendments – B. Clean-up Amendments – Florida Building Code (2023) Compliance and Emergency Shelter Mitigation (Mobile Home and RV Developments)

Mr. Dirk Danley, Jr., Principal Planner, gave an overview of the amendments.

Mr. Barraco, Jr. referred to Sec. 6-505 Accessory Structures on Page 1 of 2. He noted that his company had dealt with a project located off Pine Ridge Road. It involved an accessory structure that was similar to a shed. It was only used to store concrete forms. It had only three sides where the back and sides were walled up, but the front was open. It is not a habitable structure. They were still required to elevate it to meet the flood elevations which meant it had to be 4-5 feet above the parking lot. Even though they came to a compromise with staff, it still meant extra cost to their client for something that would not be much of a loss in the event of a flood situation since it is not the inside of an office building or someone's house. He asked if there would be any way to work around that type of situation.

Mr. Rodriguez stated the 600 square foot limitation that is established in the building code in the most recent edition is for residential accessory structures. What Mr. Barraco described would not fall within that 600 square foot cap. Although there may be a cap in place for non-residential accessory structures, this 600-foot cap is for residential accessory structures only.

Mr. Barraco, Jr. stated he did not realize this was for residential accessory structures only. However, he hoped at some point there could be discussion about non-residential accessory structures because he did not see a benefit in what his client was required to do for something that was similar to a shed and was only to house materials.

Mr. Adams noted there is a variance process available where someone can present their case before the Board of Adjustments and Appeals. It is possible to get a variance from having to build up some accessory structures.

Mr. Barraco stated it was a two-part process. They were trying to get it approved through the Development Order process. The second part was going through the building/permit process.

Ms. Hayden made a motion to accept the Land Development Code Amendments as written, seconded by Mr. Barraco. The motion was called and passed unanimously.

Agenda Item 4 – Adjournment – Next Meeting Date: May 08, 2024

The next meeting is scheduled for Wednesday, May 8, 2024.

There was no further business.

Mr. Bill De Deugd made a motion to adjourn, seconded by Mr. Barraco, Jr. The motion was called and passed unanimously.

Mr. Randal Mercer adjourned the meeting at 9:25 a.m.