

MINUTES REPORT
LAND DEVELOPMENT CODE ADVISORY COMMITTEE
(LDCAC)
Friday, July 12, 2024
8:30 a.m.

Committee Members Present:

Jem Frantz	Bill Prysi
Jay Johnson	Jennifer Sopen
Veronica Martin	Christopher Scott
Paula McMichael, Chair	Linda Stewart
Jack Morris	Amy Thibaut, Vice Chair
Jarod Prentice	

Excused / Absent:

Randy Krise	Al Quattrone
Tom Lehnert	Patrick Vanasse

Lee County Government Staff Present:

Joe Adams, Asst, County Atty.	Adam Mendez, Zoning
Aixa Cruz, Dev. Services	Janet Miller, DCD Admin.
Dirk Danley, Jr., Zoning	Rob Price, Director, Public Works
William Diaz, Code Enf.	Paula Quezada, Code Enf.
Ohdet Kleinman, Dev. Svcs. Manager	Anthony Rodriguez, Zoning Manager
Carol Lis, Code Enf.	

AGENDA ITEM 1 - CALL TO ORDER/REVIEW OF AFFIDAVIT OF PUBLICATION

Ms. McMichael, Chair, called the meeting to order at 8:30 a.m. in the Large First Floor CR 1B, Community Development/Public Works Building, 1500 Monroe Street, Fort Myers, Florida.

Mr. Joe Adams, Assistant County Attorney, reviewed the Affidavit of Publication and found it legally sufficient as to form and content.

AGENDA ITEM 2 - APPROVAL OF MINUTES – May 10, 2024

Ms. Martin made a motion to approve the May 10, 2024 minutes, seconded by Mr. Johnson. The motion was called and passed unanimously.

AGENDA ITEM 3 – LAND DEVELOPMENT CODE AMENDMENTS

Mr. Rodriguez explained how the land development code amendments are organized on the agenda. He introduced staff and which amendments they will be addressing, and clarified that staff requests separate motions for each section.

A. Development Services Amendments

1) Platting Code Changes (SB812)

Mr. Joe Adams, Assistant County Attorney, provided an overview of this section.

Mr. Scott asked if a preliminary plat is now required or if an applicant can still go straight to a final plat. In other words, is the statute only related to getting permits prior to approval of a final plat where someone would need to include a preliminary plat or is a preliminary plat required regardless?

Mr. Adams stated a plat is considered final once it gets recorded into the public records. The preliminary plat is required as part of the initial application. Once it is reviewed and approved, then it can be moved to the final plat review and then recording.

Mr. Scott made a motion to accept the amendments to 3.A.1. Platting Code Changes (SB812). The motion was seconded by Mr. Morris. The Chair called the motion and it passed 11-0.

2) Chapter 10 Deviations

a. Dumpster Size Reduction

Ms. Kleinmann, Development Services Manager, provided an overview of this section.

Mr. Morris noted that this change essentially adds 8 square feet per dwelling unit. It increases the requirement for multi-family. He suggested staff remove the square footage requirement all together. He explained that the design for the enclosures ends up being a square footage requirement instead of the actual containers that go within the enclosures. As a result, often, businesses end up with larger dumpster enclosures with wasted space inside. He also noted that you can change the frequency of pick-ups as well. Mr. Morris stated that in other municipalities they do not have the requirement stipulated by square footage. It is based on the need for waste generation. The reviewer can deem it inadequate once they review the plans. Mr. Scott stated he was in favor of these changes but would like to see staff move away from the square footage requirement.

Ms. Stewart stated that many times mini warehouse prefer trash cans instead of dumpsters because the general public tends to dump their items into a business's dumpster.

Ms. Kleinmann stated that it is usually in their contracts that they put up signs "*no public dumping.*"

Ms. Stewart stated that was correct, but it does not work. People still place their items in the dumpster despite the signs and the business owner is responsible for constantly having to get the dumpsters emptied, which is why they tend to prefer trash cans instead. She asked if someone could get a deviation from this stipulation if they prefer garbage cans versus dumpsters for mini warehouses.

Ms. Kleinmann stated that was correct. Staff would review their request for a deviation.

Ms. Thibaut made a motion to accept the amendments to 3.A.2.a. Dumpster Size Reduction along with Mr. Morris's recommendation to change the additional square footage to 4 square feet for each additional dwelling unit for both garbage and recyclables. The motion was seconded by Mr. Prysi. The Chair called the motion and it passed 11-0.

3) Minor Change Limitations

Ms. Kleinmann, Development Services Manager, provided an overview of this section.

Mr. Prysi made a motion to accept the amendments to 3.A.3. Minor Change Limitations. The motion was seconded by Mr. Morris. The Chair called the motion and it passed 11-0.

4) Types of Development Entitled to Limited Review

Ms. Kleinmann, Development Services Manager, provided an overview of this section.

Ms. Sapen referred to where it says, *“Previously developed properties that are vacant for more than one year.”* She asked if there was any availability for an argument of *“State of Emergency”* where this could be extended beyond a one-year time period. She noted this was an issue for many people because of Hurricane Ian.

Ms. Kleinmann stated that staff recognizes emergency situations. She noted that staff has reviewed a few projects that were closed for a long length of time because of Hurricane Ian and had to rebuild their businesses. Staff makes exceptions in those types of cases.

Ms. Martin made a motion to accept the amendments to 3.A.4. Types of Development Entitled to Limited Review. The motion was seconded by Mr. Scott. The Chair called the motion and it passed 11-0.

5) Sidewalk Fee-In-Lieu/Absence of Need Reexamination

Mr. Price, Public Works Director, provided an overview of this section.

Ms. Martin stated her company did not understand why a developer would have to pay a fee in lieu for a sidewalk improvement that FDOT is already going to pay for. If it is already in FDOT's budget, why would a developer have to pay Lee County for the fee in lieu for not building the sidewalk?

Mr. Price stated this happens on county roads as well. It is the standard that the Commissioners put in the Land Development Code. He explained that if it is on the maps that a sidewalk is required and a developer does not want to build it, they pay the fee in lieu to construct it. This is the process in place.

Ms. Martin stated she did not understand why FDOT is not getting the fee in lieu since they are the ones who are going to construct the sidewalk.

Mr. Price stated that FDOT does not approve development orders. The County reviews and approves them.

Ms. Stewart agreed with Ms. Martin's sentiments and stated she had the same question. If the intention is to have the sidewalk built and FDOT agrees to construct it, it did not seem right to still charge someone the fee in lieu.

Mr. Price stated this is how it has been handled for many years.

Ms. Thibaut stated there may be a legal perspective as far as whether an exaction is allowed. She recommended that the County Attorney's office look into this further in order to confirm whether the exaction of the fee in lieu is allowed.

Mr. Morris asked for clarification that this specifically refers to cases where the sidewalk would be along the FDOT right-of-way.

Mr. Price stated this is not necessarily the case. There are times that FDOT determines that a sidewalk should not be constructed. He noted there are instances where a county road is at the end of a dead-end street, so staff does not feel a sidewalk is necessary. The county still pays the fee in lieu. The only change in these regulations is adding in a waiver for when FDOT has ruled that they are not going to require a sidewalk.

Mr. Scott stated that the exaction referred to by committee members is in instances where FDOT is constructing the sidewalk, and the developer is still paying a fee in lieu. It seems like a “*double dip*.” This is why the committee is asking for clarification from the Attorney’s Office.

Ms. Thibaut stated it was not necessary to strike these amendments all together. She was in favor of clarifying the language to address this type of situation described in today’s discussion.

Mr. Price stated it is almost always staff’s preference for developers to construct the sidewalk. Staff does not prefer to have the fee in lieu. However, when an applicant makes a case that it does not make sense to incorporate a sidewalk, staff reviews the request and agrees to a fee in lieu to help the county be able to make the connection to the property somehow.

Ms. Stewart stated she could understand receiving the fee in lieu in instances where the developer is asking that they not be required to build the sidewalk because the county can use that money to build it someplace else where it is needed. However, if the developer is not asking for the deviation and they are being told they do not need to construct the sidewalk because someone else is constructing it, they should not have to pay a fee in lieu.

Ms. McMichael stated that everyone seems to be fine with this language, but they are asking the Attorney’s Office for clarification on whether there is an unlawful exaction.

Mr. Scott made a motion to accept the amendments to 3.A.5. Sidewalk Fee-In-Lieu/Absence of Need Reexamination but ask that the County Attorney’s office seek clarification on whether there is an unlawful exaction. The motion was seconded by Ms. Thibaut. The Chair called the motion and it passed 10-1. Ms. Stewart was opposed.

6) Street Design and Construction Standards

Mr. Price, Public Works Director, provided an overview of this section.

Mr. Scott asked if this section also included the future land use.

Mr. Price stated that was correct. It adds the general interchange. There have been questions as to whether it is intensive or central urban, so staff added the general interchange in as well on the cross section.

Mr. Rodriguez stated that the general interchange is classified as a future urban area in the Lee Plan, but it is not recognized in the table as a future urban area, so it is a clean-up item just to be sure of that consistency.

Ms. Sapen made a motion to accept the amendments to 3.A.6 Street Design and Construction Standards. The motion was seconded by Mr. Morris. The Chair called the motion and it passed 11-0.

7) Bicycle Parking Design

Ms. Kleinmann, Development Services Manager, provided an overview of this section.

Mr. Prysí referred to where it says, "...areas must include a bicycle rack with appropriate access on all sides..." He felt this could be problematic because many bike racks are single access and are not accessible from the front and back sides. He suggested staff clean-up this reference because it could be problematic for many designs.

Mr. Morris felt this was a good point. The bike racks do not necessarily need to be accessed from the backside.

Mr. Rodriguez suggested staff strike "on all sides."

Ms. McMichael noted a typo under Sec. 10-610(d)(3)a) where it says, "A bicycle parking areas." It should be "A bicycle parking area" or "Bicycle parking areas." She also noted that in the new Item 3, the reference to Director is struck out; however, it is still in Section 34-2013(b).

Staff made note of these corrections.

Mr. Prysí made a motion to accept the amendments to 3.A.7 Bicycle Parking Design with comments noted during today's discussion. The motion was seconded by Mr. Morris. The Chair called the motion and it passed 11-0.

8) Access Width Requirements for Fire Stations

Mr. Price, Public Works Director, provided an overview of this section.

Ms. Kleinmann stated staff added more clarification by adding the word "*throat width*" because there have been many instances with driveways where the flair is what is counted and the flair always ends up exceeding 35 feet; therefore, staff made it more defined as to "*throat width*."

Ms. Thibaut asked if "*throat width*" is defined in the code.

Ms. Kleinmann stated it was not.

Ms. Thibaut felt it may just be a common term that does not need to be defined.

Mr. Morris stated he has had debates with FDOT because they also do not define "*throat width*" well either. However, due to staff's intentions, he felt this was a good change.

Mr. Price stated that, to him, "*throat width*" is the width at the right-of-way line before you start to provide the radius to meet the roadway. It is your effective width of the driveway which would be set back from the roadway.

Mr. Morris stated that is how he interprets it as well.

Ms. Sapan stated she was fine with it not being clearly defined because it is only for EMS, police, sheriff, and fire, not any kind of commercial development.

Ms. Thibaut stated her only concern is that the term is mentioned in (b)(3) as well.

Mr. Prentice stated this is assuming those service vehicles would be accessing those driveways.

Mr. Price stated staff would not support it if they were not accessing those driveways. If it is just a driveway to the parking lot for employees, staff would generally not support a wider driveway. They would only support a wider driveway if there were ladder trucks and ambulances needing the extra width, so they do not go off track and damage vehicles.

Ms. Stewart made a motion to accept the amendments to 3.A.8 Access Width Requirements for Fire Stations. The motion was seconded by Mr. Scott. The Chair called the motion and it passed 11-0.

B. Code Enforcement Amendments

1) Unsafe Building Abatement Code

Mr. Diaz, Code Enforcement Manager, provided an overview of this section.

Mr. Prysi made a motion to accept the amendments to 3.B.1. Unsafe Building Abatement Code. The motion was seconded by Ms. Stewart. The Chair called the motion and it passed 11-0.

2) Penalties and Liens

Mr. Diaz, Code Enforcement Manager, provided an overview of this section.

Ms. Martin asked if the county still allows someone to reduce their violation.

Mr. Diaz stated that was correct. These changes will not affect the county's lien process.

Ms. Martin asked if the Hearing Examiner's fine is still \$285.00.

Mr. Diaz stated that was correct; however, when a property owner or their representative/agent appear at the hearing, the fee is typically reduced.

Mr. Scott made a motion to accept the amendments to 3.B.2. Penalties and Liens. The motion was seconded by Ms. Martin. The Chair called the motion and it passed 11-0.

3) Sea Turtle Conservation

Ms. Quezada, Code Enforcement, provided an overview of this section.

Ms. McMichael referred to Senate Bill 250 which does not allow the county to enact new regulations that are more restrictive. She asked how staff determined that these amendments comply with that.

Mr. Adams stated that it was mentioned during the presentation of this item that the problem is the requirements in the code are outdated to where developers cannot comply with them due to changes in technology, so staff does not feel these amendments are more restrictive.

Mr. Diaz stated there are property owners that are having trouble complying with this code because the equipment is so outdated, which is why Ms. Quezada and Ms. Lis pioneered these amendments. The sole purpose is to help the public comply with this code to update the equipment. For instance, they cannot find old yellow bulbs on-line or in the hardware store. It will allow them to change it to the amber lighting and the other equipment that is referenced in there. These amendments are for the public's benefit.

Mr. Prysi stated everyone appreciates staff's measures for sea turtle protection and recognize the difficulty in codifying those measures. However, he referred to references of "*directly visible*" and "*Indirectly visible*." He asked how staff measures that because if someone is standing on the beach, which is typically pitch black at night, and they strike a lighter, that is visible from the beach.

Mr. Diaz stated he would not recommend that his staff present a case to the Hearing Examiner where someone used a lighter, tiki torch, or a downlight on a sign.

Mr. Prysi asked if he was referring to judgement.

Mr. Diaz stated that was correct. If someone makes a concerted effort and is using shielded lighting, it is acceptable even though it can be seen from the beach. However, there are instances where someone has a fluorescent neon light that causes disorientation. Therefore, some of this is left up to discretion.

Mr. Prysi asked how someone could make sure they were complaint with this when they are putting their documentation together because the definition of "*directly visible*" is vague.

Mr. Diaz stated when plans are submitted through permitting, they are reviewed by Development Services through a set of guidelines that are established. Once the project is permitted, issued, and finalized, Code Enforcement staff visits the site and reviews the final plans. If someone has shielded lighting, they are compliant even though it can be seen from the beach. Staff cannot enforce something that is compliant even if it is directly visible. If it was brought before the Hearing Examiner, they would abate the case because the property owner is within the confines of the code.

Mr. Prentice stated that FDEP also regulates and enforces lighting as well. He asked if these regulations are in compliance with what FDEP requires.

Ms. Quezada stated these amendments are in compliance with what FDEP requires.

Further discussion took place about lighting on beach and dune walkovers.

Mr. Rodriguez stated the code prohibits lighting on beach and dune walkovers.

Mr. Prysi asked if someone was allowed to light the entry point.

Mr. Rodriguez stated that was correct because that would not be considered part of the walkover structure.

Ms. McMichael referred to references in the document of "*special events*." From the standpoint of the City of Sanibel, she recommended no special events take place at night during turtle nesting season.

Ms. Quezada stated that although staff would be favorable to that, they are not allowed to add restrictions.

Ms. McMichael stated the City of Sanibel wanted to update their lighting standard, but were told they were not allowed, so she wondered how the county handled it.

Mr. Prysi made a motion to accept the amendments to 3.B.3. Sea Turtle Conservation. The motion was seconded by Ms. Thibaut. The Chair called the motion and it passed 11-0.

4) Beach and Dune Management

Ms. Quezada, Code Enforcement, provided an overview of this section.

Ms. Thibaut made a motion to accept the amendments to 3.B.4. Beach and Dune Management. The motion was seconded by Ms. Martin. The Chair called the motion and it passed 11-0.

5) Invasive Exotics Table

Ms. Lis, Code Enforcement, provided an overview of this section.

Mr. Prysi stated there are a lot of jurisdictions around the state that merely use the EPPC (Florida Exotic Pest Plant Council) Category 1 as the prohibited list. He asked why the county does not adopt that especially since it does not necessarily add more restriction. It is merely utilizing something that is already widely accepted. He also noted there are many more plants that should be on this list and the Category 1 categorizes all of those. He also did not believe there is a licensed professional or a nursery that grows that material anymore, so he asked why the county did not use this evolving restriction for exotic plants.

Ms. Lis stated there was a state statute that limits the county from doing that. She did not know the exact statute, but she would research it after today's meeting.

Mr. Prentice stated he felt this code should reference the state's noxious and invasive weed list.

Ms. Lis concurred with that and stated it was possible to add that.

Mr. Prysi made a motion to accept the amendments to 3.B.5. Invasive Exotics Table with the recommendation to include the state list. The motion was seconded by Mr. Prentice. The Chair called the motion and it passed 11-0.

C. Clean-up

1) HEX Powers and Duties

Mr. Mendez, Zoning Section, provided an overview of this section.

Ms. Thibaut stated the standard for an ADD is if someone is proposing changes that, in the opinion of the Zoning Manager, does not increase intensity. If it is determined by the Zoning Manager that the request is not increasing density, then they would be allowed to get an ADD. She asked if in instances where the Zoning Manager determines that a proposal does not

increase density, if an applicant will be able to go through the ADD process versus taking it to the Hearing Examiner. Although she was fine with these amendments, she wanted to clarify how the ADD process will work since it can be based on intensity.

Mr. Rodriguez stated that ultimately staff discusses these types of issues with the applicant upfront to determine which process will be utilized (ADD or Hearing Examiner process). He noted there are cases to be made in instances where an applicant can show an offset. Mr. Rodriguez noted this discretion will remain and will not be changed as a result of these amendments.

Ms. Sapen made a motion to accept the amendments to 3.C.1. HEX Powers and Duties. The motion was seconded by Ms. Martin. The Chair called the motion and it passed 11-0.

2) Right to Farm Act (Fish Farm Reversion)

Mr. Rodriguez, Zoning Manager, provided an overview of this section.

Mr. Johnson made a motion to accept the amendments to 3.C.2. Right to Farm Act (Fish Farm Reversion). The motion was seconded by Ms. Stewart. The Chair called the motion and it passed 11-0.

3) Off-Street Parking Requirements for Residential Communities with a Golf Course

Mr. Rodriguez, Zoning Manager, provided an overview of this section.

Mr. Prys made a motion to accept the amendments to 3.C.3. Off-Street Parking Requirements for Residential Communities with a Golf Course. The motion was seconded by Ms. Stewart. The Chair called the motion and it passed 11-0.

4) Post-Disaster Ordinance Cross-References

Mr. Rodriguez, Zoning Manager, provided an overview of this section.

Mr. Scott made a motion to accept the amendments to 3.C.4. Post-Disaster Ordinance Cross References. The motion was seconded by Mr. Morris. The Chair called the motion and it passed 11-0.

5) Separation of Building Official/Floodplain Administrator Duties

Mr. Adams, Assistant County Attorney, provided an overview of this section.

Mr. Scott made a motion to accept the amendments to 3.C.5. Separation of Building Official/Floodplain Administrator Duties. The motion was seconded by Mr. Johnson. The Chair called the motion and it passed 11-0.

6) Quorum Requirements for Board of Adjustments and Appeals

Mr. Adams, Assistant County Attorney, provided an overview of this section.

Ms. Stewart made a motion to accept the amendments to 3.C.6. Quorum Requirements for Board of Adjustments and Appeals. The motion was seconded by Mr. Scott. The Chair called the motion and it passed 11-0.

7) Street Names

Mr. Rodriguez, Zoning Manager, provided an overview of this section.

Ms. Stewart made a motion to accept the amendments to 3.C.7. Street Names. The motion was seconded by Mr. Pysi. The Chair called the motion and it passed 11-0.

AGENDA ITEM 4 – ADJOURNMENT/NEXT MEETING DATE

Mr. Rodriguez stated the August meeting was cancelled. The next meeting will be September 13, 2024. He explained that it is staff's intent to bring forth packets every other month because the Executive Regulatory Oversight Committee (EROC) meets every other month. To keep things manageable, staff wants to present items every other month.

There was no further discussion. Ms. McMichael adjourned the meeting at 9:32 a.m.