

**MINUTES REPORT  
LOCAL PLANNING AGENCY  
March 25, 2013**

**MEMBERS PRESENT:**

Noel Andress  
Steve Brodtkin  
Wayne Daltry

Jim Green (Chair)  
Mitch Hutchcraft  
Ann Pierce (Vice Chair)

**MEMBERS ABSENT:**

Roger Strelow

**STAFF PRESENT:**

Rick Burris, Planning  
Donna Marie Collins, Chief Asst. Cty. Atty.  
Kathie Ebaugh, Planning  
Michael Jacob, Asst. Cty. Atty.  
Janet Miller, Recording Secretary

Paul O'Connor, Planning Director  
Rob Price, Development Services  
Mikki Rozdolski, Zoning  
Becky Sweigert, Environment Sciences

**Agenda Item 1 – Call to Order, Certificate of Affidavit of Publication**

Mr. Green, Chair, called the meeting to order at 8:30 a.m. in the Board Chambers of the Old Lee County Courthouse, 2120 Main Street in downtown Fort Myers.

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

**Agenda Item 2 - Pledge of Allegiance**

**Agenda Item 3 – Public Forum** - None

**Agenda Item 4 – Approval of Minutes – January 28, 2013**

**January 28, 2013**

**Mr. Andress made a motion to approve the January 28, 2013 meeting minutes, seconded by Mr. Hutchcraft. The motion was called and passed 6-0.**

**Agenda Item 5 – Sunshine Law Presentation**

Ms. Collins gave an overview of the Sunshine Laws as it pertained to open meetings, public records, standards of conduct, code of ethics, filing disclosures, and reporting of contact with lobbyists. Ms. Collins stated she would be sending the LPA by e-mail a packet of information on these topics for their files and review. She encouraged the LPA to contact her by phone or set up a meeting with her if they had any further questions.

**Agenda Item 6 – 2012/2013 Land Development Code Amendments**

Ms. Rozdolski stated the Board of County Commissioners gave staff direction approximately ten years ago to look at the Code every two years and update antiquated provisions. The amendments brought forth

today are part of that two year cycle. These amendments have been brought forward to both the Land Development Code Advisory Committee and the Executive Regulatory Oversight Committee. Both committees recommended the Board adopt the amendments. Ms. Rozdolski referred the LPA to the Overview, which outlines the amendments by chapter. She noted there were about 50 pages of amendments that relate to the Flood Hazard Reduction Ordinance. These changes are required by the State. Other than that, the majority of the amendments are housekeeping type items to create more flexibility in the code, delete excessive language, delete redundancy, clarify requirements, and create consistency between the chapters. Ms. Rozdolski stated staff requests that the LPA find the amendments consistent with the Lee Plan.

Mr. Daltry referred to Chapter 26 (Marine Facilities, Structures and Equipment, Article II. Docks and Shoreline Structures) on Page 35 where there is a red section stating, "*The proposed amendment to Sec. 26-71 is not supported by staff.*" Regarding the recommendations made by the other two committees, he asked if their recommendations were consistent with the packet or the objection that staff has raised with the one change.

Ms. Rozdolski noted the section in red states that staff is not in support of this amendment. She explained it was a private amendment proposed by a private citizen who provided their own language. Staff did not agree with their language. When it was presented before the Land Development Code Advisory Committee, they suggested staff move forward with staff's language. The same presentation was made to the Executive Regulatory Oversight Committee, but they made no motion on the subject. They decided it was not the appropriate forum for that to be discussed. In other words, the proposed language by the private citizen is not part of this package. The packet being presented today is with staff's proposed language.

Ms. Pierce referred to item (2) at the top of Page 100 and stated this paragraph seemed more appropriately placed in the Future Land Use Element as it reads like a Comprehensive Plan paragraph as opposed to a Land Development Code.

Ms. Rozdolski stated this probably did not belong in the Land Development Code and would be handled as part of the next round of amendments where staff will be looking at all of the zoning categories and cleaning up the language. She noted it would be a major undertaking. Staff will need to make sure they are still meeting that intent with the new structure.

Ms. Pierce referred to Page 101 and stated it seemed that staff is restricting the "*Industrial Development*" use category. Office and office complexes are permitted only when specifically related to the adjoining industrial use. However, she noted that in the Land Use Element "*Light Industrial*" is associated with R&D, which is generally an office based enterprise.

Ms. Rozdolski stated this was existing language and that staff is not proposing to change it. She stated it was something staff could look at during the next round of amendments.

Mr. Brodtkin referred to Page 8 (d) (1) where it says, "*The request for renewals or extension is not received by the Development Services Division sooner than six months prior to the expiration date.*" He asked what happened in instances where the request is received after the expiration date.

Mr. Price stated that once a Development Order has expired, it cannot be extended. The only way to keep a Development Order alive is through active pursuit. If you have active building permits prior to the Development Order expiring, you are still good for 18 months from that building permit.

Mr. Hutchcraft referred to Item (25) on Page 12 where it requires an estimated date of completion for the work. He asked how staff would use that. In other words, will it become regulatory? He noted that someone can estimate the date and still be within their Development Order yet exceed the date of the estimate.

Mr. Price stated it was only procedural and would not be regulatory. He stated staff would look at that section further to see if there was a way to clarify it.

Mr. Hutchcraft referred to Page 34 under Section 13-475 (Definitions). He felt this section might apply in agricultural instances. He requested that some clarification be added by saying in the parenthesis (*such as non agricultural swales, ditches, canals, or stormwater...*).

Ms. Rozdolski stated the language in that section was proposed by Natural Resources and that she would discuss Mr. Hutchcraft's suggestion with them.

Due to questions by Mr. Brodtkin and Mr. Address regarding the red section outlined on Page 35 dealing with Dock and Shoreline Structures, Ms. Collins clarified that staff did not support any amendment to the Code. However; if the code is to be amended, the language included in this packet is language that staff supports.

Mr. Address discussed a specific example of a problem in Lee County happening on Cayo Costa Island in a subdivision called La Costa Island. This particular subdivision has a deeded 50 foot wide easement that goes all the way into the Bay and gives everyone access to their individual lots in the subdivision. However, a few years ago when an application was brought before the County, the application was denied because the County said if you do not have a lot that fronts on the water you cannot have a building permit for a dock in that location. This is a situation that keeps coming up repeatedly where property owners have no legal right even though the original developer told them there would be a community dock built at the end of that road.

Mr. Jacobs stated this section was not designed to help the scenario described by Mr. Address. It was designed for a specific problem occurring in Flamingo Bay. He reviewed background information on how this section came about and why it is included with this round of Land Development Code amendments.

Mr. Brodtkin referred to comments made by Mr. Hutchcraft on Page 34 under Section 14-475 (Definitions). He stated he was supportive of the current language and was not sure anyone should be exempt from this section if the County is trying to clean up the water and keep the water clean.

Mr. Hutchcraft clarified his previous statements. He noted there were currently "best management practices" as well as different permitting requirements. This provision could be creating contradictions. This section references a stormwater permit which is an ERP permit. Typically, agricultural developments do not get those. If someone has an ERP, then he understood why they would need to comply with this. If they do not have an ERP, he did not feel someone should have to be subject to this provision due to someone else's interpretation at a later date.

Ms. Rozdolski reiterated she would discuss this section with Natural Resources staff.

Mr. Hutchcraft referred to Section 6-464 on Page 138 where it states “*A variance will not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in Section 6-446 of this article.*” He asked for confirmation that if someone can demonstrate there is no impact, they will not have a problem.

Ms. Rozdolski confirmed this was correct.

Mr. Brodtkin referred to Page 1 regarding the Special Magistrate. He asked why the verbiage in this section was crossed out.

Mr. Jacob stated that most of these amendments were clean up. This language is already included the Administrative Code so this section is redundant.

Ms. Pierce referred to Page 28 Item (3) b. which states, “*An 8:1 slope littoral shelf with herbaceous wetland plants to provide 50 percent coverage at time of planting.*” She thought the 8:1 seemed steep.

Ms. Rozdolski stated this was handled by Environmental Sciences and that it was current language.

Ms. Sweigert clarified that the 8:1 shelf design is for hardened shorelines so it would be to create more of a shallow marsh area in conjunction with hardened shore lines.

Due to a question by Mr. Daltry, Ms. Sweigert clarified 8:1 meant eight feet out and one foot down.

Ms. Rozdolski handed the LPA another page with a last minute amendment directed by the Board of County Commissioners last week for their consideration. This amendment will allow an electronic sign on US 41 between Gladiolus and Alico Road.

Mr. Green opened this item to the public. Public input was received from Charles Maseena, resident of St. James City and George Alleman residents of Ohio who bought property in this area. They both discussed problems they have had in reconstructing a dock on their property.

**Mr. Daltry suggested addressing the boat dock section separately. He made a motion to find the 2012/2013 Land Development Code amendments consistent with the Lee Plan including the additional amendment handout provided by staff with the exception of Section 26-71 for further discussion, seconded by Mr. Andress. The motion was called and passed 6-0.**

### **Section 26-71**

Mr. Andress stated he would like to see this issue addressed. He was familiar with the difficulty property owners were having in Flamingo Bay. Some additions are needed to make it clear to them what their rights are in terms of building a boat lift at the end of that 10 foot easement. He did not feel it made sense to have this easement for the lots that are up front that actually face Flamingo Road or other roads. The easement was there and was created for the purpose of being able to get to the water. You cannot do anything with the water without a boat dock or boat lift. A provision is needed so this can be accomplished. Likewise, there are problems for property owners on Cayo Costa where a subdivision has a deeded access that goes into the Bay that was created specifically for a dock that is not there. However, when a property owner applies for a dock permit, they are denied because they do not have a lot that fronts on the water. He felt the County should work with things that were created 40-50 years ago.

Due to a question by Mr. Daltry, Mr. Jacob clarified that the County Commission does not have any role in enforcing use easements between properties.

Mr. Daltry stated it seemed that if you can get to the water with your neighbor's ability, the second dock or first dock can be built if you get your other permits. The LPA cannot fix disputes between property owners.

Mr. Hutchcraft agreed with comments made by Mr. Daltry and Mr. Address. However, he felt paragraph (f) was problematic. Even though we cannot fix disputes between property owners, he did not feel the County should create an opportunity for additional conflicts, which he felt paragraph (f) created. If there is a legal right that exists, the County should not create a mechanism to give an adjacent property owner the ability to object. It is either recorded in a legal easement or it is not.

After further discussion, the LPA felt paragraph Number (3) should be omitted altogether.

**Mr. Address made a motion to find Section 26-71 consistent with the Lee Plan with the removal of Item Number (3), seconded by Mr. Daltry. The motion was called and passed 6-0.**

Mr. Hutchcraft felt there was still a certain level of frustration. If someone had a legal right prior to the current rules and regulations, they should not be required to get the approval or participation of the canal front owners as it is not always the case that you have a kind and generous neighbor. Even though deleting paragraph (3) might be the best course of action, he did not feel it addressed this issue.

### **Agenda Item 7 – 2012/2013 Lee Plan Amendment Cycle**

#### **A. CPA2011-00008: Future Land Use Element**

Ms. Ebaugh gave an overview of the policies along with a PowerPoint presentation. She noted that a more detailed discussion would take place during next month's meeting.

Mr. Address referred to the Proposed Land Use Map specifically the corner of Burnt Store Road and Pine Island Road. He felt both the southeast and southwest corners of the intersection would be some of the best suited corners for commercial yet they are shown in the Rural category even though the property around it is already zoned Commercial.

Mr. Burris referred the LPA to the red square (approximately 30 acres), which was a recent amendment to move that from Rural into Commercial. The remainder of the area is the Cape Royal subdivision. The southwest area has been Rural since the inception of the Land Use Map. Staff was merely leaving it as it is today.

Mr. Address did not feel that was a good idea.

Mr. Burris stated this could be discussed further at next month's meeting.

Mr. Address asked about the Chamber of Commerce area that was burned down. He noted there were plans to rebuild.

Mr. Burris stated he was not familiar with that.

Mr. Andress also noted there were plans to widen Pine Island Road. He showed them what section it would go through and where it would stop. He felt staff would be remiss if they did not look at a Commercial designation for that area along Pine Island Road.

Mr. Burris stated this could be discussed further at next month's meeting. He noted that what he was currently working on will be available on-line. It will be an interactive pdf where you will be able to have the aerial underneath and you will be able to click off and on the layer of the land use. People will be able to see exactly what is underneath this land use category.

Due to a question by Ms. Pierce, Mr. Burris confirmed that anything in Gray is going to be within one of the 5 municipalities.

Mr. Hutchcraft referred to a north and northwesterly corner in Lehigh Acres and noted it was one of the areas with the lowest density of housing. It is adjacent to a Rural community preserve to the west. There is Rural and county owned land to the north. The Urban infrastructure, including all of the uses, is not there. He did not see why staff was looking to put it in an Urban neighborhood.

Ms. Ebaugh stated the area he was referring to was one of the areas with the most development in the last decade. When the tier system was initially devised, there was very little activity in that quarter acre area. The reason staff moved it into the Suburban 4 Category is because it has quarter acre lots, which meets the density. It meets the platted lots that it has on it.

Mr. Hutchcraft noted that if we had done something innovative ten years ago, that area would look differently than it does today. If something innovative is not there today, he could see it developing at 4 units an acre over the next 15 years and there will be no way in or out. You must come from the south or go east to get out of there. Even though people have property rights, there are many tax certificates for that area. He hoped developers would be given an option to swap for a better lot somewhere closer to the Urban core so it would become the targeted area where we will diminish the residential development in that area as much as possible. He showed another area where we seem to be encouraging 4 units an acre when there is not infrastructure. In instances like this, he hoped staff would come up with an innovative program where they can swap for a better lot closer to infrastructure.

Ms. Ebaugh stated this was something staff is looking into. The problem with the first area mentioned by Mr. Hutchcraft is that it is already developed. The area staff has the most hope for is east of Joel Boulevard and then going down east of Bell Boulevard. This area has much less development than anything west of those two roads.

Due to questions by other board members, Mr. Hutchcraft showed other areas on the maps that he felt could be targeted.

Mr. O'Connor noted staff was proposing a policy as part of the Future Land Use Element that if someone voluntarily wants to reduce density a TDR can be used to compensate them for voluntarily going down in density. Some tools are in place for this scenario, but staff has not yet gotten specific in the Land Use Map.

Ms. Pierce suggested staff highlight those areas so they are flagged for potential applicants. It will help them when meeting with staff to talk about their options. She felt it was a good idea as a first step, but that it should be put in place in order to have a vigorous program that will actually work. She also noted there were a couple of other cities that are trying to shrink in an orderly manner. They may have worked out a few logistics that the County may want to borrow.

Mr. Daltry noted there may be instances where, due to these land use changes, a vacant property next to someone may be allowed to do something that is not currently permitted once these changes are adopted. He found these areas difficult to identify with the current map. He asked for a translation map. It could be a simple map showing the outlying areas that are affected by the land use changes. The map should show where the intensity/density has increased as well as the areas that have decreased.

After staff indicated this map already existed, Mr. Daltry asked that it be provided to the LPA at next month's meeting.

Ms. Ebaugh indicated staff was preparing individual maps for each of the communities as well.

Due to discussion by the LPA regarding wanting to see the Transportation Element again before it is part of the complete packet as well as questions by Mr. Daltry regarding the transportation maps, Ms. Ebaugh reviewed the schedule for the elements and explained there were a series of transportation maps and other land use maps that have not yet been brought forward. Staff plans to bring all the maps to the LPA at the same time. Therefore this month and next month are dedicated for discussion of the Future Land Use Element. In addition, staff will bring forward all of the maps to be discussed with the LPA at a separate meeting before all the elements are brought back before the LPA as a bundle. Staff prefers to finish the review of the Future Land Use Element and the Land Use map before doing a compilation of the maps.

Due to a request by Mr. Daltry, staff agreed to provide the LPA with a list of maps they intend to bring forward.

Mr. Hutchcraft noted that all of the Urban categories are mixed-use except for one which is Commercial. He asked why the Commercial properties are so unique that they need their own category instead of being rolled into a mixed-use designation.

Mr. O'Connor noted the one larger red spot near the City of Cape Coral was a privately initiated amendment where they requested to be listed as Commercial. The other large red spot is located on Palm Beach Boulevard near Old Olga Road. It was supported by the community and the property owner through the planning process to be a Commercial category.

Mr. Daltry referred to "place based areas" and "special treatment areas." He asked if there was still a free trade/enterprise zone relating to the Airport extending to Fort Myers.

Staff confirmed there was.

Mr. Daltry felt this free trade/enterprise zone should be a special treatment area because: 1) it is one where federal money is continually asked for; 2) it was supposed to be an industrial job place; and 3) he believed it was an area where things could be fabricated and shipped out without paying taxes. Regarding the new policy (1.9.11), he asked if there was anything in writing for the Research Enterprise Diamond.

Mr. O'Connor stated the County had conducted the ULI initial study of that area. He explained that this policy is intended to reflect that as a beginning effort. Staff is now looking at a follow-up study for that area, which is a grant from the American Institute of Architects. This information will be taken to the Board of County Commissioners in the near future where staff will see if there is still an interest on the Board's part in treating this area different from other areas of the county.

Mr. Daltry requested more background such as any write-up that came with any technical studies on this Research Enterprise Diamond area.

Due to a question by Mr. Address, Mr. O'Connor confirmed that retail was a permitted use in the Tradeport area.

Mr. Address referred to Daniels Parkway and Treeline Boulevard. He noted staff listed the southeast and northeast corners as a Tradeport area. He thought there had been a map amendment done for that area where it was changed to Commercial.

Mr. O'Connor stated that was a privately initiated amendment that was not adopted by the Board as there was an issue about the increased traffic that would be created as a result of the proposed amendment.

Mr. Address asked where the access was off of Daniels Road for the indicated tracts.

Mr. O'Connor stated most of the properties fronting Daniels do not have a lot of Daniels Road access. There is access to a secondary road system that runs behind the properties. He noted Daniels Parkway is a limited access parkway; therefore, there is limited access along Daniels Parkway in both the Tradeport and Suburban areas to the west.

Mr. Address asked how this applied to properties that were platted prior to 1972 in terms of ingress and egress.

Mr. O'Connor stated he was not prepared to answer that today; however, he noted that everyone gets ingress and egress, but they may not necessarily get it off of Daniels Road because the County is trying to keep the capacity of that road at a high level.

Mr. Address hoped the County would look at the corners of Daniels Parkway and Treeline Boulevard. Due to the activity on that road (approximately 40,000 trips per day), this site is probably one of the better Commercial sites in the County.

Ms. Pierce asked that staff make a change to some of the green color coating. She noted it is used nine times between three categories with only subtle gradations of green that are hard to discern. She suggested using other colors.

Mr. Hutchcraft stated the LPA most likely has many comments to provide to staff on the Future Land Use Element. He asked if it would be beneficial, between now and the next LPA meeting, for the LPA to provide staff with their comments in writing. He thought it might help staff review the comments, condense them, collate them, and/or respond to them.

Mr. O'Connor stated the LPA was welcome to do that but they should utilize the [LPA@leegov.com](mailto:LPA@leegov.com) e-mail address.

Mr. Daltry asked that staff provide the LPA with any responses to their comments prior to the next meeting.

Mr. O'Connor noted there was a correction to the Density Table. Staff inadvertently put, within the Wetlands category, 1 dwelling unit per 10 acres instead of 1 dwelling unit per 20 acres. The text in the policy is correct, but it was listed incorrectly in the table.

Mr. Green opened this item for public comment. No public input was received.

Mr. O'Connor reviewed some letters he received on different EAR elements.

Ms. Pierce and Mr. Daltry asked that staff provide copies of all public comments received to the LPA.

Mr. Brodtkin referred to Page 3 of the staff report where it mentions moving detailed Land Development Standards to the Land Development Code. He noted there were definitions in the different community plans that may change once they are incorporated into the Land Development Code. It could mean that staff changes the community plans without the communities being made aware of it.

Ms. Ebaugh stated staff was aware that changes in the site location standards may impact a few of the communities that reference the site location standards as part of their policies. Staff plans to work with those individual communities to make sure their language is fixed before the adoption of the Plan takes place.

Ms. Pierce noted that about 50% of her comments are regarding "how" these ideas will get implemented. She referred to the Florida State Statute that says the Comprehensive Plan has to describe how the local government is going to initiate, modify, or continue to implement what is in this Plan. She did not feel this was adequately covered as part of this element and was not in favor of having it all moved into the Land Development Code.

Ms. Ebaugh stated most of the "how" is found in an element that has not been reviewed by the LPA. It will be covered in the Procedures and Administration Element. However, staff will be happy to receive any comments from the LPA regarding specific policies that they feel need further detail or are not self explanatory.

#### **Agenda Item 8 - Other Business**

Mr. O'Connor noted the next three Local Planning Agency meetings (April 22<sup>nd</sup>, May 20<sup>th</sup>, and June 24<sup>th</sup>) would be held in the Administration Conference Room located on the first floor of the County Administration Building, 2115 Second Street, Fort Myers, FL.

#### **Agenda Item 9 – Adjournment**

The meeting adjourned at 11:25 a.m.