

MINUTES REPORT
LOCAL PLANNING AGENCY
July 22, 2013

MEMBERS PRESENT:

Noel Andress	Mitch Hutchcraft
Steve Brodtkin	Ann Pierce
Wayne Daltry	Roger Strelow
Jim Green (Chair)	

STAFF PRESENT:

Rick Burris, Planning	Janet Miller, Recording Secretary
Donna Marie Collins, Chief Asst. Cty. Atty.	Matt Noble, Planning
Brandon Dunn, Planning	Paul O'Connor, Planning Director
Kathie Ebaugh, Planning	Howard Wegis, Utilities

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 Administration Conference Room of the County Administration Building, 2115 Second 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 – 2013 Regular Lee Plan Amendment Cycle

A. CPA2013-00001 – West Lakes Excavation Small Scale Amendment

Mr. Dunn distributed two maps (existing and proposed Lee County Map 6) for this minor amendment.

Mr. Noble gave an overview of the staff report and recommendations.

Mr. Daltry asked if we provide for temporary hook-ups for conveniently located lines that run down areas that are not to be receiving urban services.

Mr. Noble stated that if they were within the service area someone could get a temporary connection and later discontinue the service at some point.

Mr. Daltry asked what would happen if it was outside the service area and the line is running by it.

Mr. O'Connor stated staff had not come across that situation because the water and future service area maps cover urban designations. The urban designations are not temporary connections. He noted there were a couple of places in the plan where there are non-urban designations and it is shown within the future service area. He believed someone in a non-urban area could get a temporary hook-up, but there is not currently a policy in place for that type of scenario.

Mr. Green asked if there was a way for someone to get a temporary hook-up without going through a comprehensive plan amendment process.

Ms. Pierce referred to Corkscrew Woods, which was a mining site at one time. Once the mining operation ceased, the property owner wanted to maximize the value of their property. The area turned into a residential subdivision. She asked what the future of the West Lakes property would be once the mining is no longer profitable. She also asked how this could be handled to ensure that the after math of the mine would not become development.

Mr. Noble stated the current request is sized to accommodate the existing office building along with the expansion that is already approved through their mine approval.

Mr. Dunn stated that although Corkscrew Woods was once a mine, it is very different from this project in that Corkscrew Woods was an existing residential community. One of the criteria was that it had to be an approved residential community that was consistent with the DRGR. West Lakes Mining does not fit that criteria.

Mr. O'Connor stated that the West Lakes mine would have the capability to develop residentially at 1 unit per 10 acres. This poses the question of whether Lee County should be providing services like potable water to low density development. This same dilemma occurs in Pine Island where only the urban areas are shown on the future service maps for water and sewer. There have also been issues on Pine Island regarding septic systems. Staff has debated the merits of making a future sewer service area cover the entire island. This has not been received well by the citizens of Pine Island, so it has not taken place. Several meetings have been held to discuss if Lee County should be in the business of providing urban services in a spot manner as the need shows itself or not.

Ms. Pierce referred to Mr. Green's question and asked if there was an alternative way to handle this small scale amendment.

Mr. O'Connor stated that currently a small scale amendment is the only procedure available; however, this does not mean that staff cannot draft something else up for future projects.

Mr. Wegis stated his understanding was that we could not provide water service to West Lakes unless they are in a future service area.

Mr. Hutchcraft stated this use being requested by West Lakes is a legal use, a permitted use, and a use consistent with the Comprehensive Plan. West Lakes has been in existence for a number of years and they have a horizon that is 20-30 years. In his research, he found this to be one of the most technologically advanced mines in South Florida as well as Southwest Florida. It has infrastructure running immediately adjacent to it. The County should be utilizing existing infrastructure in an economical way to support an existing permitted, legal use that has 20-30 years on the horizon. He felt the Corkscrew Woods case was completely separate than West Lakes because Corkscrew Woods was a permitted residential project.

Mr. Green noted the Board was simply struggling with how we can provide water for someone without them having to go through a Comprehensive Plan Amendment process.

Mr. Strelow asked why the County could not simply provide that we will allow this service as long as this particular mining activity exists. When that terminates, whatever subsequent activity is proposed for the site, the applicant could come in and say they want the service extended for their purpose. There would be a trigger that would require consideration of the new request.

Ms. Tina Ekblad from Morris-Depew stated she was representing the applicant. She reviewed the proposed project and gave background information. She did note that without this amendment, based on how the process works, the project cannot have a central connection to potable water without this small scale amendment. In terms of the possible expansion of the service area for the future redevelopment of the property, as currently approved, the mining limits would not allow a conversion to residential. In addition, the existing approval does not include residential uses. This means that the applicant cannot simply decide they do not want the mine anymore and propose a residential subdivision in its place. This cannot be done under the existing approvals. The applicant would have to come back and submit the new request through another cycle of amendments. She explained the reason for their request is because their existing potable well has some treatment contamination issues and it is very expensive to continually treat the water. The infrastructure does exist adjacent to the applicant's property boundary. It will be the applicant's responsibility to pay the fees proposed for that type of connection. There is capacity at the Lee Corkscrew Treatment plant, not just for the existing 5,000 square feet, but also for the potential future expansion. Ms. Ekblad asked for the LPA's approval since this request is not inconsistent with the DRGR. The uses have already been approved. They have an IPD resolution and these uses were deemed consistent with the DRGR at the time of approval.

Mr. Brodtkin asked if the applicant would be opposed to something that sunsets or to something that is considered temporary until the use changes.

Ms. Eckblad stated she was advised that this small scale amendment is the only way for the applicant to pursue the extension request. Since the mine is going to have a 20-30 year lifespan, it is not typically considered to be temporary. To have this handled in another way is not something that could be done as of today.

Mr. Depew noted they had been receiving notices from the Health Department that arrive on a weekly basis stating there is a problem with the contamination levels. Therefore, they need to act timely on this and the Small Scale Amendment process is how they were told to handle the request.

Mr. Andress hoped this request would not turn into a big, complicated issue. The applicant merely wants to run a water line through their property. If they want to make any changes in the use of the property, they will be required to come back before the LPA. Bringing potable water to the site would mean having another use for the water service, which adds revenue to the water service.

Mr. Noble referred to a comment provided to him by Ms. Collins that there had been testimony today as to the length of the mine. It is essentially to the horizon year of the Plan. It may not necessarily need to be considered in a temporary fashion as it will continue through the life of the Plan.

Due to a question by Mr. Daltry, Mr. Depew stated there were approximately 35-40 people at the West Lakes site.

Mr. Daltry felt this was a significant number to where it should be considered a public health issue.

Mr. Green opened this item for public comment. No public comment was received; therefore, the public comment segment was closed.

Mr. Hutchcraft made a motion to recommend adoption of the proposed amendment, per staff's recommendation, seconded by Mr. Andress.

Additional discussion took place regarding whether there could be an easier process for future applicants who have this type of minor request.

Mr. Green asked if staff could evaluate this further as part of the process we are going through with the Plan update.

Mr. O'Connor stated that similar issues are out there and staff is looking for ways to explore those issues and come up with some kind of a resolution. He agreed that this was a lengthy process, especially in a situation where the Health Department is stating there is a problem with the contamination levels of the water.

Mr. Noble stated staff had some informal direction to Utilities that if we arrive at that point where there is an imminent public health issue, we should not continue to put people at risk. We should take care of the imminent public health issue and let the paperwork follow.

The motion was called and passed 7-0.

Mr. Daltry felt there would be more of these types of requests in the future. **He made a motion that as part of updating the Plan, staff examine where in the Plan there could be a policy that provides for temporary hook-up for public health purposes to easily accessible county owned water systems, seconded by Mr. Hutchcraft.**

Mr. Andress wanted to add "*without having to do a comprehensive plan amendment.*"

The motion was called and passed 7-0.

Ms. Pierce referred to the degree of contamination for that area and asked what the source of this contamination was and whether it was unusual or typical.

Mr. Wegis clarified the contamination issue was not with the well itself. It relates to the water treatment system used. The applicant is using groundwater and it is a community water system because they have a certain amount of employees. They are required to disinfect the water and are most likely using chlorine instead of chloramines. Often what happens is you develop what is called "disinfection byproducts." You can only use chlorine on the well water. It would require an expensive treatment system to correct the problem.

Agenda Item 5 – New Horizon 2035: Plan Amendments

A. CPA2011-00016 – Procedures and Administration Element

Brandon Dunn reviewed the staff report and recommendations.

Mr. Hutchcraft referred to Item d. on Page 19 and expressed a concern that there might be an unanticipated consequence because the way the language is written it seems to presume that all Minimum Use Determinations (MUDs) will be requested in Open or DRGR lands. He could see an instance where someone in a Suburban category that asked for a MUD might want to request a zoning increase or density increase at some time in the future. The current language seems to prohibit this.

Mr. Noble confirmed that someone fitting that description would be prohibited from that because they would be below the lot size requirement of the land use category, so they will only get the single family home.

Mr. Hutchcraft asked what would happen if they purchased the lot next door and combined the two lots.

Mr. O'Connor stated they would no longer be below density.

Mr. Hutchcraft stated that if processed as an individual parcel, he can understand this provision. However, there are instances where additional density might be appropriate. An example would be an older parcel that is small in size that is surrounded by higher density. They should be able to get a higher density since it would be consistent with what is around it, but this language would prohibit it. He felt it would be best for staff to clean this language up to allow some flexibility.

Mr. Noble stated these were typically granted in subdivisions where every lot is below those lot size requirements.

Mr. Hutchcraft stated that although that would be fine in most cases, he was still concerned with the "law of unintended results" and felt staff should re-write this portion to allow for some flexibility.

Ms. Pierce asked if the owner of the small property could go through a Small Scale Amendment to seek the additional density or intensity.

Mr. Hutchcraft stated that the current language prohibits it because it says, "***The property owner may not increase the density or intensity of uses on the property.***" He recommended it say, "***The property owner may not increase the density or intensity of uses on the property subject to the following exception: surrounding conditions support modification, the parcel has been combined with an adjacent parcel.***" The language could continue with the other exceptions listed in the paragraph.

Mr. Strelow referred to the top of Page 10 where it says, "***...and if it meets all other criteria enumerated by the County.***" He felt this was a vague "catch all" description. It seemed more appropriate to say, "***...and if it meets all other established regulatory requirements of the County.***" The language should be more specific; otherwise, problems could arise from the vagueness at some point in the future.

Mr. Strelow referred to Item 2 c. on Page 17 where it says, "***Interpretations should, to the extent practical, be consistent with prior interpretations...***" He stated there are times when more flexibility is given to a particular official then should be. In a judicial world, a court that makes a ruling in one way, normally will not easily overrule itself. He proposed the language read, "***Interpretations should be consistent with prior interpretations unless there is a compelling reason to the contrary grounded in the Comprehensive Plan or arising from the Comprehensive Plan.***"

Mr. Daltry referred to Page 22 where it mentions the Comprehensive Plan Annotations Committee. Due to questions posed by him, Mr. O'Connor clarified that the Comprehensive Plan Annotations Committee is a Sunshine Committee. Their meetings are open to the public, the public is allowed to provide input, and the meetings must be advertised in the paper.

Ms. Collins noted the Comprehensive Plan Annotations Committee does not meet often.

Mr. O'Connor stated that in the beginning they met often because there were many things that needed interpretations. However, the last time they met was 3-5 years ago and it was only because of a fairly controversial interpretation dealing with Pine Island that drew a lot of public interest.

Mr. Daltry suggested staff add a clarification sentence that the Comprehensive Plan Annotations Committee is a Sunshine Committee.

Ms. Pierce referred to Page 23 that states the Comprehensive Plan Annotations Committee can either meet privately or publicly.

Mr. O'Connor stated it was interpreted many years ago by the County Attorney's office that these meetings need to be public; therefore, staff will correct this language.

Mr. Brodtkin referred to Mr. Hutchcraft's comments earlier about the small parcel in the middle of other parcels. He preferred the remedy of handling it through a minor land use change.

Mr. O'Connor stated he agreed with Mr. Hutchcraft's comments because if someone's circumstances change and they purchased another lot, thereby meeting the density for two units, they should be able to get what they are allowed. However, this language does not permit that because the lot has an old Minimum Use Determination and the owner is stuck with that even if their circumstances are changed.

With this clarification, Mr. Brodtkin stated he was in support of that change.

Mr. Brodtkin noted that the public participation portion was removed and asked for clarification that it was outlined in the Administrative Code.

Mr. O'Connor stated the Administrative Code covers public participation. It was removed from this element because it was duplicative.

Mr. Brodtkin asked what the process was to make a change to the Administrative Code.

Ms. Collins stated it was handled through a blue sheet that is placed on the Administrative Agenda portion of the Board of County Commissioner's agenda. The meetings start at 9:30 a.m. and are open to the public. It is a simpler process because it pertains to procedure only. These changes do not go before the Local Planning Agency.

Mr. Daltry asked if the Administrative Code was an ordinance.

Ms. Collins clarified it becomes an adopted resolution, not an ordinance.

Mr. Brodtkin asked if the procedure for public participation could be readily changed by the Board at any time.

Mr. O'Connor stated there are statutory requirements that must be met. If a change is made, it cannot be below the statutory requirements. The County also goes beyond the minimum statutory requirements, which is outlined in the Administrative Code.

Mr. Green opened this item for public comment. No public comment was received; therefore, the public comment segment was closed.

Mr. Address made a motion to recommend transmittal of CPA2011-00016 and find it consistent with the Lee Plan, seconded by Mr. Daltry. The motion was called and passed 7-0.

Agenda Item 6 – Other Business

Pending Liabilities/Law Suits

Mr. Address referred to an article in the paper stating there were \$20 million dollars worth of pending liabilities and lawsuits regarding the Pine Island Plan. The article also stated there was another \$41 million dollars worth in potential claims that people could file. He asked why the County Attorney's office would be advertising this to people on the Island. He believed a memorandum came from the County Attorney's office which was provided to representatives at the Newspaper so they could write their article.

Ms. Collins stated she had been out of the office last week, but would be happy to look into it for the LPA. She stated the County had hired outside Legal Counsel to handle the Pine Island cases. The Board of County Commissioners wanted an updated estimate of what this outside Legal Counsel believed the County's exposure was based on the adoption of the Pine Island Plan based on three things: 1) the existing lawsuits that have been filed; 2) the test cases; and 3) the balance of how many other potential land owners could file similar claims. Ms. Collins believed the memorandum may have been released while she was out of the office. The memorandum is considered public record, so the press could have easily gotten a copy. She also noted that the existing lawsuits that have been filed are greatly limited due to a settlement offer that was made by the County, which was rejected. The law is that if they reject the settlement offer, their damages become "capped." Any damages are based on that offer. Regarding any future lawsuits, the County will have the ability to make a similar settlement offer. If a memorandum did get distributed, Ms. Collins stated she would provide a copy to the LPA.

Mr. Address referenced a recent case with Ponce Island just south of Daytona Beach that is germane to many of the cases that are pending in Lee County. The courts ruled that the County could make decisions on land use and that it does not entitle land owners to seek and receive compensation.

Agenda 21

Mr. Address stated there was a movement under foot in Lee County to eliminate the Lee County Comprehensive Plan. This movement is comprised of a group of individuals that have appeared several times before the Board of County Commissioners on an "Agenda 21" item. This group is against Sustainability and want all references to it removed from the Comprehensive Plan.

Ms. Pierce stated this group has been very successful at intimidating County supervisors and County Commissioners into eliminating the whole process.

Agenda Item 7 – Adjournment

The next Local Planning Agency meeting is scheduled for Monday, August 26, 2013, at 8:30 a.m. in the Board Chambers, Old Lee County Courthouse, 2120 Main Street, Fort Myers, FL 33901.

Staff stated CPA2012-00001 River Hall would be on the docket for the August meeting.

Ms. Ebaugh reviewed the EAR schedule with the LPA and agreed to e-mail them the schedule for informational purposes.

Mr. Hutchcraft asked how the LPA would know what was changed on the revised elements.

Ms. Ebaugh stated that Attachment 1 for all the elements was the clean version. Going forward, Attachment 1 will be in strikethrough/underline format. Staff will not be preparing new staff reports for the upcoming revised elements.

The meeting adjourned at 9:40 a.m.