LAND DEVELOPMENT CODE ADVISORY COMMITTEE
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING
1500 MONROE STREET, FORT MYERS

First Floor Conference Room 1B

FRIDAY, JULY 08, 2016
8:00 A.M.

AGENDA

1. Call to Order/Review of Affidavit of Publication

2. Approval of Minutes – MAY 13, 2016

3. LDC AMENDMENTS

4. Adjournment
   Next Meeting date: AUGUST 12, 2016

Persons with disabilities who need an accommodation to participate in the Land Development Code Advisory Committee meeting should contact Debbie Carpenter, 1500 Monroe Street, Fort Myers FL 33901 (239-533-8345 or Dcarpenter@leegov.com**)**. To ensure availability of services, please request accommodation as soon as possible but preferably five or more business days prior to the event. Persons using a TDD may contact Debbie Carpenter through the Florida Relay Service, 711.

MINUTES REPORT
LAND DEVELOPMENT CODE ADVISORY COMMITTEE
(LDCAC)
Friday, May 13, 2016
8:00 a.m.

Committee Members Present:

Richard Ibach
Patrick Vanasse
Linda Stewart
Randy Krise
Bill Morris
Jennifer Sapen
Jay Johnson
Tom Lehnert
Bill Prysi
Al Quattrone
Peter Kemezys
Paula McMichael

Absent:

Gerald Murphy
Tom McLean

Lee County Government Staff Present:

Neysa Borkert, Assistant County Attorney
Debbie Carpenter, DCD Admin Svcs., Recorder
David Loveland, Director, Community Development
Andy Getch, LCDOT
Ben Dickson, Dev. Review Manager
Tony Palermo, Zoning
Nettie Richardson, Zoning
Aaron Martin, Dev.Review

Consultants/Members of the Public Present:

Steve Leung, David Plummer Associates

CALL TO ORDER AND AFFIDAVIT:

The Chairman, Patrick Vanasse, called the meeting to order at 8:02 a.m. in the first floor conference room (1B), 1500 Monroe Street, Fort Myers, Florida.

Ms. Neysa Borkert, Assistant County Attorney, reviewed the Affidavit of Posting, found it legally sufficient as to form and content, and advised that the meeting could proceed.

Mr. Vanasse introduced Paula McMichael. Ms. McMichael stated she has been on the west coast for about 10 years, is currently employed by Hole Montes and was appointed by Commissioner Mann.

APPROVAL OF MINUTES – April 8, 2016

Mr. Randy Krise made a motion to approve the April 8, 2016 minutes; seconded by Mr. Richard Ibach. The motion was called and approved unanimously.

LAND DEVELOPMENT CODE AMENDMENTS

Mr. Tony Palermo reminded the committee that the public initiated amendments were discussed at the last meeting, as had a portion of the regular 2016 amendments. At that time it was agreed that further discussion was warranted concerning Chapter 2 (Concurrency and Proportionate Share requirements) along with the accompanying administrative code, and the landscaping portions of Chapter 10. Mr. Palermo summarized what remained to be reviewed in Chapters 22, 32 and 34. He said Andy Getch would talk about Chapter 2, Ben Dickson would address Chapter 10.

Ms. Borkert reminded the committee that the administrative code relative to Chapter 2 was for information only and would not require a motion from the committee, however committee comments were welcome.

Mr. Getch provided a brief recap concerning the changes to Chapter 2 and Chapter 34 as they related to transportation concurrency and a process called Proportionate Share. He said this does not come up often but is relevant when a development has traffic which generates 5% or more of traffic on a specific road segment which exceeds the service volume adopted for level of service (LOS) standards and causes that road to fail. This is the process for the developer to pay a proportionate share if costs exceed road impact fees. As a result of discussion at the last meeting, comments were solicited from transportation and engineering professionals, as well as from other jurisdictions that may be affected by a proportionate share agreement. Only a few comments were received.

Mr. Vanasse said because he had concerns but was not an expert on the subject, he had forwarded the Chapter 2 amendments to Mr. Stephen Leung of David Plummer Associates. Mr. Leung was present and Mr. Vanasse invited him to speak. Mr. Leung said he was very familiar with impact fee, proportionate share, and development mitigation studies for Lee, Collier and Charlotte counties. His opinion was that impact fees should be brought back to 100%, otherwise this proportionate share process was unfair. He talked about the purpose behind recent legislation (Amendment 163 and 7207). He was not clear why this amendment was being proposed and did not believe that the proposed amendment was required to be compliant with state statutes. His specific concerns were that impact fees were not being assessed at 100% and that there is no guarantee that an improvement will be made even though the proportionate share has been assessed. Mr. Leung also expressed concerns with regards to methodology and proportionate share calculations that he said would best be discussed with staff directly due to their technical nature.

In response, Mr. Getch said impact fees, and the rate at which they are collected, is a policy decision by the Board. This amendment is to update both the Land Development Code and the Administrative Code to be consistent with state statutes. The process is already in place and is a fair way to address transportation issues. Mr. Loveland reiterated that the proportionate share requirements are already in the code and have been for a long time.

Mr. Vanasse said his concern about the proportionate share process was that if impact fees are only at 45% a development will have to do a proportionate share agreement since impact fees are not sufficient. Mr. Getch reviewed the methodology of impact fees and the proportionate share calculations. Mr. Loveland stated Impact fees are an “average” calculation of land use value based on a county-wide condition versus a site specific analysis based on the impact from a particular project on that road segment, the latest phase of which may trigger the need. Under the old rules concurrency would have been denied based on the failure of a particular road segment and the County had the option of accepting a proportionate share agreement from a developer. Under the current process, projects have not been denied even for failure of multiple segments, and even then there have been only a handful of projects where this has come up. More discussion followed.

Mr. Getch again stressed this was an update of the current process. The amendment attempts to streamline and clarify the process, eliminate redundancy and moves the procedures for calculating proportionate share costs to the administrative code. The most significant change to the requirements is that the developer is only responsible for the amount of traffic from a specific stage or phase of the project that pushes a particular road segment over the LOS volume, which is an improvement from how it used to be. The proportionate share analysis by the developer is optional. Staff will do an initial assessment at the time of development order using information already in the traffic study submitted. If there is a significant impact, then based on a comparison between the proportionate share calculation versus the impact fee obligation, depending on that outcome, a proportionate share agreement would be an option. More discussion followed.

Mr. Leung said his concern was that once the proportionate share assessment was made he had no say about how that money, or equity, was spent. Mr. Vanasse had a concern about that also saying the money gets paid but there is no guarantee of when, or if, the improvement will be made. Mr. Loveland said a developer pays only a portion of the improvement required, the county pays the

remainder. The county's obligation is to allocate the money to fix a level of service problem and that is a policy decision. Under the old rules a development would have been denied until improvements were made and any development after that would have been denied as well pending the improvements. In the current scenario, it is "pay and go"; pay the proportionate share and development can continue regardless of whether the improvement is made, and subsequent developments are not required to go through the proportionate share review.

Mr. Vanasse had a question about another county's requirement for payment when a project was on a state road that was already funded. Mr. Getch said our methodology allows a development to account for already committed projects. This would not be something that Lee County could ask for under our code.

There was a brief discussion concerning committed projects. Mr. Loveland responded to Mr. Vanasse's question concerning the addition of LRTP (Long Range Transportation Planning) **Sec 2-67**. This relates to detailed cost estimates for committed projects not necessarily in the CIE (Capital Improvement Element).

Mr. Vanasse asked if the cost for improvements in the proportionate share agreement was based on multimodal. Mr. Getch responded that the adopted LOS standard is based on motor vehicle capacity and that is what the proportionate share cost is based on. However, Mr. Loveland said the typical capacity improvements will include those facilities as part of the cost.

Ms. Borkert pointed out the two options concerning revenue. In **F. <u>Appropriation of revenues</u>** of the administrative code, the funds must be deposited in the "appropriate roads impact fee district for funding....", or "as otherwise established in the terms of the proportionate share agreement." There is a general situation or a negotiated situation but in either case the funds are not totally untethered.

There was additional discussion concerning DRI's specifically and how those used to be handled and how they are handled now under the current standards.

Mr. Vanasse asked for committee comments. He suggested that any motion reflect a recommendation to the Board to look at adjusting impact fees back to 100% in coordinate with the implementation of proportionate share from an equity standpoint. His concern was that the proportionate share program has the possibility of impacting large projects more so than small projects. He also asked that a recommendation be made to the Board to look at where the money collected for a specific improvement will be spent.

Mr. Lehnert asked if there was anything new added that was going to increase costs for his client.

Ms. Borkert said there was a lot of procedure taken out of the land development code and moved to the administrative code which left just operational law in the LDC. Although there were things added, much of the language did not change, but formatting-wise it was easier to strike through all of the old text and add the new text as a whole, rather than inserting text and doing strike-thru/underline which made for difficult reading.

More discussion followed concerning: transportation funding mechanisms; requirements not being consistently applied; predictability and applicability; different interpretations of state statutes; how specific changes would affect developers.

Mr. Palermo reminded the group that the mandate was to make regulations consistent with state statutes. Ms. Sapen commented that most of this discussion centered on the administrative code changes which did not require any action by the committee.

Mr. Vanasse wanted to find a solution to move the amendment forward, but also to express the concerns of the industry and the committee. Mr. Bill Morris understood that it was important to be

consistent with state law, but that there were concerns related to the specific methodology of implementation that needed to be resolved subsequent to moving the amendment forward. Mr. Lehnert said he would support only those changes that were needed to comply with state law.

Mr. Krise made a motion to approve the changes to Chapter 2 with a recommendation to the Board of County Commissioners that because of the scale and complexity of the issue that they have staff work in cooperation with private sector consultants and transportation experts with regard to the applicability, methodology and allocation of the money. Mr. Vanasse asked that the motion be amended to be more specific: that the applicability include looking at the proportionate share program and how it relates to impact fees, and when each is used; that the methodology include the ability for developers to negotiate at the methodology stage; and that allocation of the funds include a guarantee of how and where that money will be spent. Mr. Krise amended his motion accordingly. Seconded by Mr. Morris.

The motion was called and carried 11-1, with Mr. Lehnert opposed.

Mr. Ben Dickson introduced Chapter 10 changes. The changes were mainly housekeeping in nature to bring the code into alignment with state statutes and eliminate conflicting provisions. Some of the comments and suggestions from the last meeting have been taken into account. One significant change was elimination of the Sabal palm relocation/preservation requirement presently in the landscape code.

Mr. Vanasse recommended a page by page review of the remaining amendments, inviting the committee to make comments as needed.

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Mr. Ibach questioned why pine straw mulch was the only acceptable mulch material in dry detention areas. Mr. Aaron Martin explained that with a heavy rain, other types of mulch float and clog drain pipes. Typically pine straw will mat down, not float up and clog pipes. Mr. Morris suggested adding an option to use a geotextile material or something similar as an alternative. Staff will consider adding an acceptable alternative following research.

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Mr. Prysi thanked staff for considering some of the recommendations from the last meeting.

Sec 10-418 Mr. Prysi and Mr. Aaron Martin discussed the intent behind the change in the littoral calculation. Mr. Martin explained the change was intended to establish the number of littorals required, rather than the amount of coverage as provided now, which is often misinterpreted. Mr. Prysi recommended that the calculation take into account planting based on “on-center” and staff agreed to add a clarification.

Sec 10-419 Mr. Prysi strongly encouraged removing the 100% native requirement in the Alternate Landscape Betterment Plan stating that is was a contradictory standard, it actually ends up mandating a poor design, and forcing a native plant in an unnatural situation is not necessarily better. His opinion was that the industry would have no problem maintaining the minimum standards but requiring 100% native negates the purpose of the betterment plan. Following a discussion with Mr. Martin, Mr. Prsyi suggested adding language that the minimum native requirement currently in code must be met and maintained.

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Sec 10-420. (f). Ms. Linda Stewart asked for the rationale for changing final to parking lot grade. Mr. Martin explained that there was no definition for final grade as a site has multiple grades, therefore, because the buffer areas along the perimeter are generally intended to screen the parking lot, using the parking lot grade seemed the most appropriate. Discussion followed concerning areas

that are not adjacent to a parking lot, and about minimum requirements for berms or swales. Ms. Stewart was concerned that language has become so specific that there is never any leeway if a site is not within the norm. Ms. Borkert said an administrative deviation was an option; Ms. Stewart said that adds more layers and cost to the project. Ms. Borkert commented that it is difficult to apply one standard to all situations. Mr. Vanasse felt the language could be crafted in such a way to provide an allowance for those cases. Staff agreed to review the language.

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Ms. Stewart asked why Ductile Iron (DI) was no longer an allowable pipe for sewer force main. Staff said that was a Lee County Utility requirement and offered to contact LCU and have them clarify that requirement with Ms. Stewart.

Mr. Lehnert made a motion to approve Chapter 10 with comments as noted. Seconded by Mr. Jay Johnson. Motion was called and carried unanimously.

No comments or changes to Chapter 22**.**
Motion to approve by Ms. Sapen, seconded by Mr. Lehnert. Motion was called and carried unanimously.

No comments or changes concerning Chapter 32**.**
Motion to approve by Mr. Lehnert, seconded by Ms. Stewart. Motion was called and carried unanimously.

Chapter 34

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Mr. Prysi asked why the standards were changing to allow backlit gas station canopies **(Sec 34-625).** He said if the design standards were being changed as a cost benefit, he could understand that, however this is not the case. He understood it was important for the islands to be lit for people pumping gas, but these canopies can be seen for miles; they are a blight on the landscape with no real benefit to the community. This also ties into the elimination of the prohibition for accent banding in **Sec 34-1353.** He did not agree with the elimination of the prohibition of either.

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Ms. Stewart asked about what looked like an additional buffering requirement in **Sec 34-1352(e).** Following a brief discussion, it was decided that with the addition of 10-416(d) this was just a cross reference. Staff agreed to check on this to be sure, but the consensus was that this was not an additional requirement.

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Ms. Sapen asked if "cooking facilities" was defined somewhere. Mr. Lehnert commented that it was defined somewhere in the building codes.

Mr. Vanasse said he found it confusing to have the density equivalent section here (**Sec 34-1414 (c)**). Staff explained that it was actually an effort to make it easier while reading about these types of facilities to have the density information there rather than having to search for it elsewhere. There will still be cross references.

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There was a typographic error in the heading of Table 34-2020(a) that will be corrected.

Ms. Sapen had a comment concerning the parking spaces requirement as it relates to the number of bedrooms. There was a brief discussion.

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Mr. Vanasse asked about **Sec 34-3272** as it related to mobile home lots. He asked if conventional

homes were previously allowed on mobile home lots and if this change now prohibits that. Ms. Richardson responded saying there is a specific section of the code that relates to conventional single family homes, this section only deals with lots of record. This change does not take away a use.

Mr. Prysi made a motion to approve Chapter 34 amendments with the exception of Sec 34-625 and 34-1353 (recommendation to deny changes to those sections). Seconded by Mr. Peter Kemezys. Motion was called and carried unanimously.

Motion to adjourn by Mr. Prysi. Seconded by Mr. Johnson. Motion carried. Meeting adjourned at 10:05 a.m.

The next meeting was tentatively scheduled for June 10, 2016.

DRAFT

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: June 7, 2016

TO: Dave Loveland
Director of Community Development

FROM: Michael D. Jacob
Managing Assistant County Attorney

RE: LDC Revisions

Recently, the County adopted revisions to Chapter 32 under Ordinance 16-10. As a result of the adoption of the Ordinance, a couple additional amendments are needed for clarification and consistency purposes. In addition to the clarification amendments, the amendments proposed below provide a mechanism for creation of property development regulations consistent with the County's practice of providing property development regulations in planned developments. The creation of that mechanism negated the need for recently adopted § 32-243(p).

If you have any further questions regarding these changes, do not hesitate to let me know.

Sec. 32-241. - Lot types allowable in each transect zone.

Subsections (a) through (e) remain unchanged.

(f) Additional lot types, unique to a particular Compact Community Planned Development may be requested and assigned to any transect under the following circumstances:

Subsections (1) through (3) remain unchanged.

(4) Open space, integration of the separate portions of the development, and architectural features are consistent in the proposed lot types with the other lot types throughout the proposed Compact Community Planned Development, consistent with a Traditional Neighborhood Development design if development is to be located within the proposed lot types; and,

(5) A schedule of uses specific to the proposed lot type ~~will be~~ is established from either section 32-244 and/or the list of uses identified for all planned developments under section 34-934.

RE: LDC Revisions

Sec. 32-243. - Property development regulations.

(a) **Property development regulations.** Each Compact Community Development must provide for and comply with its approved property development regulations.
(1)The Property development regulations provided under Table 32-243 do not apply to development approved under the Compact Community planned development rezoning process. The specific property development regulations for a development approved under the Compact Community planned development rezoning process must be approved by the Board during the rezoning public hearing process. The approved property development regulations must provide for the following:

i. Lot area (minimum and maximum in square feet),
ii. lot width (minimum and maximum),
iii. frontage percentage(minimum and maximum),
iv. lot coverage by all buildings (maximum),
v. setbacks(minimum), including street, side yard, rear yard, and water body,
vi. height (maximum subject to the maximum height permitted under the Lee Plan or Land Development Code),
vii. maximum building footprint of accessory apartments (in square feet); and,
viii. comply with the requirements of the Lee Plan, achieve the objectives of the planned development, and will not cause a detriment to the public health, safety and welfare.

(2) Property development regulations for all other Compact Communities must meet the requirements set forth in Table 32-243 or request a deviation meeting the requirements for approval of deviations under Chapter 34.

(3) The property development regulations approved during the planned development rezoning process or provide under Table 32-243 supersede contradictory requirements in this Code including the property development regulations for individual zoning districts in chapter 34.

(4) Unless approved through rezoning process or a deviation is approved, each Compact Community planned development must meet, in addition to the approved property development regulations, the requirements of subsections (c) through (o) below.

~~***Dimensions for each lot type.*** Table 32-243 provides property development regulations that apply to each designated lot type. These requirements supersede contradictory requirements in this Code including the property development regulations for individual zoning districts in chapter 34.~~

Subsection (b) remains unchanged.

(c) ***Frontage percentages.*** Frontage percentage is the percentage of the width of a lot that is required to be occupied by the building's primary façade. ~~Table 32-243 provides minimum and maximum frontage percentages for each lot type.~~

(1) Up to 50 percent of the width of the primary façade may be counted as meeting the frontage percentage requirement even though it may be set back up to ten feet further from the street than the primary façade's principal plane. See example in figure 32-243(a).

(2) The location of the primary façade's principal plane is not changed by façade extensions such as bay windows, awnings, porches, balconies, stoops, colonnades, or arcades, or by upper stories that are closer to or further from the street.

(3) The width of a porte cochere may be counted as part of the primary façade.

Subsections (d) through (o) remain unchanged.

~~(p) Property Development Regulations unique to a particular Compact Community Planned Development may be requested and approved as part of the Compact Community Planned Development Application without the need for deviations.~~

Sec. 32-502. - Application requirements.

Subsections (a) through (c) remain unchanged.

(d) ***Deviations.*** Deviations may be requested from the Land Development Code. An applicant must clearly identify deviations requested from the specific standards of the Land Development Code. The Board of County Commissioners will decide whether to accept, modify, or reject each proposed deviation during the planned development rezoning process based on a determination as to the consistency of each deviation with this chapter, good planning practice for compact communities, and the deviation criteria in chapters 10 and 34. Potential deviations specific to compact communities include the following:

(1) Modified block standards (section 32-225).

(2) For street types shown in article II, modified cross-sections (section 32-226) and/or modified streetscape standards (section 32-227).

(3) Additional street types, accompanied by proposed cross-sections (section 32-226) and streetscape standards (section 32-227).

(4) For lots types shown in article II, modified transect zone assignments (table 32-241), ~~modified property development regulations (table 32-243),~~ and/or modified use regulations (table 32-244). Additional uses within a lot type may be proposed for a Compact Community Planned Development under the following circumstances:

a. The uses included in section 32-244 do not adequately allow for the types of development proposed to be contained within the proposed Compact Community Planned Development;

b. A schedule of uses specific to each lot type is proposed with uses being from section 34-934; and,
c. A justification of how the additional uses promote a mix of uses, enhance the planned development and are consistent with a Traditional Neighborhood Design.

(5) Additional or changes to lot types~~, accompanied by allowable transect zone assignments (table 32-241), proposed property development regulations (table 32-243), and proposed use regulations (table 32-244)~~ will be approved in accordance with section 32-241(f).

(6) Unless otherwise approved through the planned development process, the property development regulations for each lot type must meet the requirements of table 32-243.

Sec. 34-933. - Permitted uses.

Except in the MEPD and PRFPD~~, and Compact PD~~ districts, or where otherwise specifically indicated to the contrary, the uses listed in section 34-934, pertaining to use regulations for planned development districts, may be permitted in the indicated districts when consistent with the goals, objectives and policies of the Lee Plan for the land use category in which the property is located, and when approved on the enumerated documentation of the master concept plan. Uses that are not specifically listed in section 34-934 may also be permitted if, in the opinion of the Director, they are substantially similar to a listed permitted use.

In the MEPD and PRFPD districts, only those uses specifically listed in section 34-941 may be approved on the master concept plan. ~~In the Compact PD district, allowable uses of individual lots are set forth in chapter 32, article II.~~

Sec. 12-118. Monitoring requirements; inspections.

(a) *Purpose.* Given the overall life of mining operations, adjustments to the design, maintenance, operation and monitoring of the mine excavation may be appropriate over time. By requiring monitoring reports at consistent intervals over time the County and applicant/mine operator will have a realistic opportunity to discover and address adverse impacts precipitated by the mine activity.

(b) *Comprehensive/cumulative monitoring report.* A five year cumulative monitoring report, including all elements required to be monitored under this section and the MEPD resolution, is required every five years, beginning with this initial MOP approval under this article, and at the time of MOP renewal. The purpose of the report is to identify trends with respect to the elements monitored in order to determine whether certain actions or changes are appropriate to increase compatibility of ongoing mine activity with its surroundings.

(c) *Monitoring reports.* Monitoring reports must be submitted in accord with this section unless the MEPD resolution conditions provide otherwise.

(1) *Water quality.* In addition to the requirements set forth in section 12-117, the operator of the mining operation together with the property owner must submit an annual report that provides:

a. Copies of periodic surface, and groundwater levels and quality monitoring requirements, at intervals determined by Natural Resources or as conditioned in the MEPD approval, pertaining to the baseline levels identified in the approved pre-development analysis and those anticipated for use in conjunction with the proposed mining project. All data must be submitted in an electronic format as set forth in section 12-117(d).

b. Water quality parameters to be tested for both the surface and groundwater are listed on Table 1: Water Quality Monitoring Check List set forth in appendix O.

c. Signed and sealed bathymetric surveys covering the new areas excavated and providing the depth of the existing excavation as well as the ~~quality~~ quantity and type of materials excavated.

d. Details of noncompliance events, data trends, and methods of resolving such events.

e. Water level measurements must be conducted under the guidance of a Florida registered professional engineer with an established quality assurance plan. The report must be signed and sealed certifying accuracy and supervision of data collection.

This report must be submitted to the Department of Community Development every year beginning on the anniversary of the date that the mining operation received the first MOP to commence the mining operation. A report must be submitted annually until the reclamation of the mining operation is complete.

f. The monitoring report must use the data collected during the previous year and state any cumulative trends or noteworthy changes in discharge concentration or volumes related to background, as well as any modification necessary in the operating procedures to better manage/reduce negative impacts or trends. If management measure modifications were proposed in a previous report, the subsequent monitoring report must include an evaluation of the effectiveness of the proposed modification in controlling negative trends or impacts.

g. Additional monitoring issues as set forth in the MEPD resolution and MOP approval.