MINUTES OF THE COLLIER COUNTY DEVELOPMENT SERVICES ADVISORY COMMITTEE LAND DEVELOPMENT REVIEW SUBCOMMITTEE MEETING

Naples, Florida, March 9, 2022

LET IT BE REMEMBERED, the Collier County Development Services Advisory Committee-LDR Subcommittee, in and for the County of Collier, having conducted business herein, met on this date at 3:00 P.M. in REGULAR SESSION at the Collier County Growth Management Department Building, Conference Room #609/610, 2800 N. Horseshoe Drive, Naples, Florida, with the following members present:

Chairman: Clay Brooker
Robert Mulhere
Mark McLean
Jeff Curl
Blair Foley

ALSO PRESENT: Richard Henderlong, Principal Planner
Eric Johnson, LDC Planning Manager
Sean Kingston, Senior Planner
Mike Bosi, Director, Planning & Zoning
Mark Templeton, Principal Planner, Development Review
Andrew Youngblood, Operations Analyst
Jamie French, Deputy Department Head, GMD
Jaime Cook, Director, Development Review

Any persons in need of the verbatim record of the meeting may request a copy of the audio recording from the Collier County Growth Management Department.

1. Call to Order - Chairman

Chairman Brooker called the meeting to order at 3 p.m. A quorum consisting of five members was convened.

2. Approval of Agenda

Mr. Foley made a motion to approve the agenda. Second by Mr. Curl. Carried unanimously, 5-0.

3. Old Business

None

4. New Business

a. LDC Amendments

i. PL2021000766 – Off-Site Boat Storage

Chairman Brooker said there was a request to continue this item.
Mr. Mulhere said he would recuse himself from the matter because he represents the applicant.

Mr. McLean made a motion to continue PL2021000766– Off-Site Boat Storage. Second by Mr. Curl. Carried unanimously, 4-0; Mr. Mulhere recused himself.

Mr. Foley asked why there was a request to continue and by whom.
Mr. Mulhere said Jamie French asked him to meet with the Parks & Recreation staff first. It's not a site-specific amendment, but it involves Port of the Islands. He was asked to hold a voluntary neighborhood information meeting. That's what occurred two years ago, so he will talk to his client about it. He thought it would be better to finish that process first before bringing it to DSAC-LDR. They agreed to some language revisions and he didn't want to bring this before the DSAC-LDR twice. He wants to resolve the issues with language and bring it before DSAC-LDR and then DSAC.

Mr. Johnson said the next DSAC-LDR meeting is in June and he's looking for another date for the DSAC-LDR meeting.

Mr. Curl said he also was originally minimally involved in this matter.

ii. PL20220000207 – Comparable-Use Determination (CUD) Update [Sean Kingston]

Mr. Kingston presented a PowerPoint presentation, *"Planning & Zoning Division CUD Update."* He reported that:

- On Oct. 12, 2021, the Board directed staff to bring back a LDCA utilizing the Conditional-Use approval process for CUDs on a site-specific basis. The Board decided a CUD should be applicable to parcels seeking a CUD within the zoning district being examined, and not to all zoning districts for the proposed use.

- The current method of comparing uses with other more intensive zoning district uses without having to assess the full effect the CUD would have on neighboring or adjacent properties was objectionable.
- This LDCA shall require a CUD to be made by conditional-use approval in non-PUD districts as decided by the Hearing Examiner or the Board of Zoning Appeals, rather than the Planning Commission.
- The CU process addresses ingress and egress to property and structures, noise, glare, odor, and traffic flow, to be fully assessed for compatibility with adjacent properties and other properties on a site-specific, case-by-case basis.

The Proposed Revisions Are:

- CUDs shall be applicable in the C-1 through C-5, Industrial, Business Park, Civic and Institutional, Golden Gate Parkway Overlay and Immokalee Mainstreet Overlay Zoning Districts, including PUDs only by CU approval.
- CUDs shall be decided by the HEX or BZA.
- In LDC section 2.03.07 F., Table of Uses, line item No. 2 listed under Commercial Uses is relabeled from "C" to "CU." Line item No. 32 is changed from "P" to "CU" under Economic Development Uses.
- Revision to the Administrative Code Chapter 3 L, Subsection "Applicability" in Attachment "A."

Staff recommends that petition LDCA-PL20220000207 be forwarded for approval, including the revisions presented by staff.

Mr. Johnson listed the changes that were made: Pages 1, 5, 11, 12, 14, 15.

Mr. Kingston said they are highlighted in yellow.

Mr. Mulhere questioned why Santa Barbara and other overlays, the larger ones, such as four or five in Immokalee, didn't need changes.

Mr. Henderlong said that in 2020-44, when the amendment was changed and [Land Development Code Manager] Jeremy Frantz was here, staff went through and looked at how that changed the Comparable-Use Determination when that amendment was done. That's the root. That amendment was used and made to conform to these new changes.

Mr. Mulhere said he'd hate to see some overlay that has the Comparable Use and it's not a Conditional Use and someone takes advantage of it.

Mr. Henderlong said that was a good recommendation and they would conduct a second review on this before it goes to DSAC.

Mr. Mulhere said he had a question about the first substantive change under Commercial Zoning Districts C-1, Permitted Uses No. 41, which was struck in its entirety. He understood that they wanted to eliminate the Comparable-Use process that would relate generally to any commercial use or professional service that is comparable in nature to the foregoing, but that's going to slip down to a Conditional Use rather than a permitted use. He cited concern about the remaining

phrase, "including those that exclusively serve the administrative as opposed to the operational functions of a business – and are associated purely with activities conducted in an office." That used to be a judgment call made by the planning manager, zoning director, etc.

Mr. Kingston said the CU process would look at each use that is being proposed to be comparable. Before, this went to the comparable use determination section and since this is being deferred to the conditional use process, it will…

Mr. Mulhere said he couldn't think of something in C-1 that isn't an office that might require an office. You'd hate to make someone go through a CUD to have an office and a use that is permitted. That language there, which used to be administrative but then was subject to CCPC or Hearing Examiner, says, "including those that exclusively serve the administrative as opposed to operational functions of a business and are associated purely with activities conducted in an office" in the Professional Office District. He didn't know all the permitted uses there. He questioned if any of those permitted uses there have the ability to have an office—an administrative office for their business? It assumes it's a use that is not expressly permitted, including those that don't have an office.

Mr. Johnson responded in the affirmative and listed the permitted uses in C-1 (zoning district): accounting, adjustment and collection services, advertising agencies, architectural services, auditing, automobile parking lots, barber shops, beauty shops, bookkeeping services, and business consulting services.

Mr. Mulhere said he was OK with those uses. No one would object if they had a little office.

Mr. Johnson clarified that the conventional zoning district, or rather the non-PUDs, would go through the CU process, whereas the PUDs would still retain the CUD process.

Mr. Kingston explained that the process just applies to PUDs and the process is decided by HEX or BZA.

Mr. Mulhere asked what the difference was.

Mr. Kingston said the CUD process is simpler whereas the CU process is more complex. The CUD process addresses ingress and egress to property and structures, noise, glare, odor, traffic flow to be fully assessed for compatibility with adjacent properties and other properties on a site-specific, case-by-case basis. It's intended to be site specific.

Mr. Mulhere noted that the reality is if it's a use that has a negative connotation, you would be asking for the same things.

Chairman Brooker asked if the notice requirement was the same for the two processes.

Mr. Johnson said it was.

Mr. Henderlong said it must go through a full advertised hearing and there's a Neighborhood Information Meeting, NIM. It's different if it's a PUD. It can go directly to advertising for the

HEX and BZA. If it's a conditional use, the Planning Commission gets involved and they must make a recommendation on it.

Chairman Brooker thought it was HEX, not the Planning Commission.

Mr. Mulhere said it depends on whether it's a major or minor conditional use and if it involves heightened public interest.

Mr. Johnson said Conditional Uses are earmarked for the HEX, but if there's heightened public interest, the BZA is the decision maker and it must go to a Planning Commission hearing first. The decision maker is still the BZA. He didn't recall if the CUD process required a mail-out.

Chairman Brooker said a sentence confused him, the whole idea of pyramid zoning. Everything in C-1 is permitted in C-2 with additional uses, everything in C-2 is permitted in C-3, but with additional uses. So that's now a problem. If we determine that something is comparable to C-1, it's not necessarily comparable in C-2? It is logically flawed by definition.

Mr. Johnson said he believed that in the beginning of each of the zoning districts, it says "any use that's permitted in the preceding zoning district."

Chairman Brooker said if there's a determination that something is comparable to C-1, by definition it's comparable to C-2, C-3, C-4 and C-5. That's not what the background says.

Mr. Bosi said the direction to provide for this clarification resulted from the Isle of Capri Food-Truck Park. Staff made the determination that a food-truck park was a Comparable Use within a specific zoning district. He detailed the genesis of how the LDC amendments came about:

- The Board of County Commissioners, after reviewing the appeal hearing, provided direction that they didn't want the ability for one parcel of land to seek a CUD within a zoning district and that determination applies zoning district countywide.
- That would mean any parcel zoned the same as the parcel going through the CUD would receive the benefit of that additional use.
- Prior to a change about three years ago, the Comparable-Use Determination for a zoning district was housed within the conditional use, meaning it was only for that parcel, specifically for that parcel, and you would be able to put additional conditions on the process if you felt there was some external exertion from that use to the adjoining properties that needed to be further addressed.
- The BCC said to bring it back and in the zoning districts, make it site specific because a CUD in a PUD is only applicable to that specific PUD.
- The BCC wants that same type of limited reach for a CUD in a zoning district to be that limited and that's why it's now being proposed to bring it back where it originally was, in the conditional uses within the individual zoning district.

Mr. Mulhere said in the old days, it was determined by the planning director. He didn't believe the county ever used a zoning letter, but if you look at the old PUDs, you see it was administratively decided.

Chairman Brooker said he appreciated that information. It makes sense. What was written did not. The definition of pyramid zoning is logically flawed.

Mr. Bosi said it's being proposed because they did not want one parcel of land to be able to add a use and then that use becomes available to every parcel of land with the same zoning classification.

Mr. Mulhere extended the argument to say that a CUD could be approved, maybe up to three times, and the obvious thing to do would be to add that as a permitted use to the zoning district, as opposed to a food truck park, which generates noise and odors and may have special conditions placed on that.

Mr. Brooker asked if it was Celebration Park that prompted this change.

Mr. Bosi responded that it was a food truck park proposed on the Isles of Capri.

Mr. Henderlong [displayed a page on the PowerPoint presentation] told Chairman Brooker that the language says, "The Hearing Examiner or the BZA shall hold at least one advertised public hearing. The decision-maker will be the Hearing Examiner or the BZA. If the PUD ordinance language identifies the CCPC or the Planning Director (or other similar County staff) as the authority to determine a use is comparable, compatible, and consistent, a Staff Report will be presented to the Hearing Examiner or the CCPC for approval of the Comparable Use Determination. The Zoning Division will review the application and identify whether additional materials are needed. Staff will prepare a Staff Report to present to the Office of the Hearing Examiner or the CCPC for a decision.

That's where the Planning Commission would come in.

Chairman Brooker thanked him for the clarification and suggested that they make that one sentence of background information in the LDC amendment clearer.

Mr. McLean made a motion to recommend approval as revised, with two caveats: that staff will look at the overlays mentioned by Mr. Mulhere and clarify the introductory language Chairman Brooker cited. (There were no public speakers.) Second by Mr. Curl. Carried unanimously, 5-0.

b. Tree-Removal Permit vs. ICP/SDPI Process

Mr. Curl said this issue began with a Code Enforcement complaint he was involved with. They were directed to go through either the ICP or SDPI process. The problem is that Code Enforcement dropped the complaint because the plan was approved. He'd already told the property owner they had three years to install it. Technically, there are escalations in Code Enforcement, such as 30 days and six months. That's nowhere near three years. So once these homeowners or HOAs were hit with something they didn't plan on installing right away, they felt under pressure. But then they had a reprieve, a three-year time frame versus a 30-day time frame, and that's where this fell apart.

A discussion ensued and the following points were made:

- If there's a Code Enforcement violation, part of the remedy for removal of trees without the appropriate approval would be an ICP or an SDPI.
- Code Enforcement's time frame is always unrealistic because they don't understand what it takes to achieve that remedy, but as soon as they understand how long it takes, they usually give the violator more time.
- The time frame should be the one that applies to an ICP or an SDPI.
- The problem is that Code Enforcement closes the case after a plan is approved and should not be returning to inspect the property if the homeowner believes there is a three-year time frame.
- This issue could be resolved by a staff supervisor.
- There should be some language, a stipulation, that goes in the approval letter that says the violator has 60 days or six months, some sort of a time frame.
- Homeowners could keep Code Enforcement Investigations Manager Jeff Letourneau updated on the status of the violation and remedy.
- Code Enforcement could provide up to a one-year extension because a year may not be enough time for certain cases, such as those involving DOT permits.
- Code Enforcement cases are typically not closed until the trees are put in and the property is back in compliance.
- A state statute allows Code Enforcement to set its own timeframes, six months, 12 months or whatever they believe is reasonable.
- Homeowners should be issued a notice of violation, saying they must go before the Code Enforcement Board, which must provide a timeline for compliance. Otherwise, there is no pressure to remedy the violation.
- A Code Enforcement officer should issue a Notice of Violation if a homeowner has an SDPI, just to allow the case to go before the Code Enforcement Board to set a timeline; the officer would not recommend a violation.
- SDP letters specify a three-year timeline, but SDPI letters do not.
- Having inspectors check properties for compliance after homeowners provide a plan is not the best use of staff time.
- When homeowners provide an SDPI, Code Enforcement should open a new case to follow through and ensure the property is in compliance and that trees were planted.
- Two solutions: Do not close the Code Enforcement case, or change the SDPI language.
- For a Code Enforcement case, requiring a letter from an engineer is an additional expense, but some sort of certification letter could be required to verify that trees were planted and the property is in compliance.
- A one-year timeline would be a good start, with the possibility of an extension.
- Code Enforcement officers should be educated about the need not to close a case to ensure the violation is monitored and brought back into compliance.
- A checklist should be used.
- If it's a contractor/builder, once they acquire the permits, the contractor licensing laws will kick in.
- In the past, violators were charged four times what a permit costs.

Chairman Brooker made a motion to bring this matter before the DSAC for further discussion and before Mike Ossorio or a designee to discuss with DSAC. Second by Mr. McLean. The motion passed unanimously, 5-0.

[Mr. Mulhere temporarily left the meeting at approximately 3:45 p.m. and returned at approximately 3:49 p.m. He left the meeting at 4:05 p.m.]

c. Confirm Remaining 2022 meeting dates:

i. June 15, 2022 (or earlier; TBD)
ii. September 21, 2022
iii. December 14, 2022

5. Public Comments

None

6. Adjourn

There being no further business for the good of the County, the meeting was adjourned by the order of the chair at 4:08 p.m.

COLLIER COUNTY DEVELOPMENT SERVICES ADVISORY COMMITTEE
LAND DEVELOPMENT REVIEW SUBCOMMITTEE

Clay Brooker

Chairman: Clay Brooker

These minutes were approved by the subcommittee/chairman on MAY 4, 2022, (check one) as presented X, or as amended _____.