

April 18, 2018

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

Naples, Florida, April 18, 2018

LET IT BE REMEMBERED, the Collier County Development Services Advisory Committee – Land Development Review Subcommittee in and for the County of Collier, having conducted business herein, met on this date at 3:00 PM in a REGULAR SESSION at the Growth Management Department Building, Room 609/610 2800 N. Horseshoe Drive, Naples, FL with the following persons present:

Chairman: Clay Brooker
Blair Foley
Robert Mulhere (Excused)
Brad Schiffer (Excused)

ALSO PRESENT: Dan Summers, Director, Bureau of Emergency Services Division
Jeremy Frantz, LDC Manager
Rich Henderlong, Principal Planner
Eric Johnson, Principal Planner
Ellen Summers, Senior Planner
Mark Templeton, Principal Planner
Michael Bosi, Zoning Division Director
Michael Shaw, Emergency Management Coordinator
Lauren Bonica, Human Services Program Manager

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 Division – Planning and Regulation building.

1. Call to order

Mr. Brooker called the meeting to order at 3:10pm. He noted he was the only one present and a quorum could not be established. The meeting will be held for informational purposes with the comments being reviewed by Staff and the proposed Amendments being brought forth to the Development Services Advisory Committee for a recommendation.

2. Changes to Agenda

None

3. Old Business

None

4. Review of Amendments to LDC Sections:

a. LDC SECTION: 5.05.04 Group Housing

SUMMARY: The Amendment creates new requirements for assisted living facilities and nursing homes, as defined by §§ 400 and 429 F.S. requiring Emergency Environmental Control Plans (EECP), and installation of permanent emergency generators.

DESCRIPTION: The new State rules require nursing homes and assisted living facilities to acquire alternative power sources, such as a generator, that ensure sufficient cooling temperatures are maintained at 81 degrees Fahrenheit or cooler, during extended power outages for at least 96 hours, to all of the facility's residents.

The following points were discussed:

- Mr. Brooker wanted to know why staff chose to adopt some of the State standards and not all. He expressed concern the State already has requirements and the County may be duplicating the efforts or preempting State requirements.
- Mr. Brooker noted that the anticipated fiscal impacts are “not insignificant,” and he was pleased the industry was willing to absorb the additional costs of complying the additional requirements.
- Mr. Brooker felt the new regulations will help the industry against potential litigation.
- Mr. Brooker was concerned about code enforcement action being taken too quickly against non-compliant facilities.
- Mr. Curl inquired about whose responsibility it will be to enforce the regulations. He also asked about follow-up maintenance inspections.
- Mr. Brooker asked if the fuel tanks for the generators are generally above-ground or below-ground.
- Mr. Brooker asked staff to clarify if the proposed LDC regulations were more stringent than the Comprehensive Plan with regards 72 hours of generator run-time compared to 96 hours.

Staff reported:

- The proposed State standards that were chosen will reinforce the requirements that staff determined to be issues after the most recent hurricane. Some of the State standards have little to no enforcement at the State level, and adopting the proposed standards will allow the County to enforce said standards. With respect to preemption, staff hasn't received any comments from the County Attorney's Office, but staff will request an official statement from them.
- Staff had a training session with the Florida Department of Elder Affairs and the Agency for Health Care Administration. The Governor signed a bill on March 28, and there are April suspense dates that every nursing home and licensed facility needs to report with respect to their Emergency Power Plan (EPP). Staff assisted the licensed facilities in creating a EPP template to help facilities meet this requirement. Fines are approximately \$1,000 per day for non-compliance. Staff determined there are a few missing pieces in the State legislation that would help build a Comprehensive Emergency Management Plan (CEMP), which will be a plan for the facility - "How to shelter?" and "How to evacuate?" - and now this new Appendix, which is their EPP. Staff showed the EPP to the industry (i.e., Florida Assisted Living Association and a webinar) and received no push-back. The CEMP legislation had been drafted in the 1990s and it had not been updated. In comparison, the EPP is "current technology," including information such as square footage, generator loads and run-times, and fuel consumption. In the CEMP, staff was encouraged by the State to have some local rule to meet our needs. Jurisdictions can ask for finished floor elevations and the elevation for the generator to assist staff in determining whether a facility can shelter-in-place or needs to evacuate. Staff wants the local activity to piggyback the State legislation, particularly in the event of any future court challenges.
- Facilities are required to submit an EPP to the local emergency management agency by April 25, 2018 for implementation to occur by June 1, 2018. A six-month extension may be granted until January 1, 2019. Facilities may submit an ad hoc power plan for this season while they're working on something permanent. They can bring in a towable generator and spot coolers to demonstrate compliance, or they can document that they have either rental equipment under contract or rental equipment on-site.
- The State legislation did not reference NFPA 99, which addresses generator standards for a Class 1 (facility) - the equivalent to hospital-level readiness and preparedness. NFPA 99 addresses preventative maintenance, load-testing, and documentation of load-testing. In the proposed amendment, the County will ask the question, for example, "Has your fuel been properly sampled?" The County Emergency Management staff will require attestation from a 3rd party, such as from an authorized manufacturer's representative, local service dealer, or electrical contractor, who has done an evaluation of that generator for PM fuel reliability and load-transfer.
- The fuel tanks for generators are typically installed above-ground.
- Staff noted the Comprehensive Plan requires 72 hours of climate control, whereas the LDC amendment proposes 96 hours.

Staff to contact the County Attorney's Office to determine any issues with County adopting the regulations which may preempt the State Statute.

b. LDC SECTION: 5.05.05 Facilities with Fuel Pumps

SUMMARY: The Amendment clarifies the requirements to install a generator transfer switch at gas station facilities and introduces the requirement to install a permanent an emergency generator.

DESCRIPTION: At the Board of County Commissioners Work Session on November 7, 2017, Staff presented several regulatory responses to the After-Action Findings regarding the County's Hurricane Irma Response. Regulatory Action #3 suggested strengthening the emergency generator requirements for commercial gas stations located near the interstate highway and multi-pump stations located further inland.

The following points were discussed:

- Mr. Brooker asked staff to clarify if the County may be duplicating or preempting State requirements that are already in place.
- Mr. Brooker commented that he saw no Fiscal or Operational Impacts, which he thought was inaccurate.
- The requirement for installation of generators/transfer switches (GTS) applies to newly constructed service stations, those within ½ mile of I75 or existing facilities with a renovation of 50 percent or greater assessed value of a structure. What part of structure qualifies for the assessed value (main building, pump areas, both, etc.)?
- Mr. Curl asked about the screening of accessory structures from public rights-of-way. He also talked about landscape maintenance, a topic of discussion that is pertinent to other amendments as well. He made a general comment about noise abatement for generators and later mentioned that hedges have very little noise abatement qualities.

Staff reported:

- Anticipated fiscal or operational impacts were yet to be determined. Staff intends to identify the impacts to the County as well as to facilities with fuel pumps.
- The problem with the existing State regulations is that there is no enforcement capability or penalty for non-compliance.
- After Hurricane Irma, the gas stations complained that fuel shortages were primarily caused by the following: 1) facilities having the GTS were depending upon the arrival of temporary equipment that never came in or not installed; and 2) the lack of communications and internet connectivity to assist with POS. Establishments, such as Costco and Sam's Club, transmit via satellite for their POS; however, smaller retailers rely on Comcast Cable Business or other type of communication.
- With respect to the assessed value of a facility, it was not staff's intention to draft regulations that are stricter than the State statutes.
- No new screening or noise abatement requirements are being proposed.

Staff to check on any conflicts or preempting of State regulations and clarify the parameters for the assessed value requirements.

c. LDC SECTION: 5.05.17 Residential Developments with Community Clubhouses or Recreational Facilities (New Section)

SUMMARY: The amendment establishes new standards for community clubhouses or recreational facilities in residential developments, aiding the County's response and recovery after an emergency event.

DESCRIPTION: At the Board's Work Session on November 7, 2017, Staff presented several regulatory responses to the After-Action Findings regarding the County's Hurricane Irma Response. Regulatory Action #2 suggested creating a local ordinance to help address evacuation shelter deficits.

The following points were discussed:

- Mr. Brooker was concerned about the increased cost to individual homeowners.
- Mr. Curl was concerned about gated communities and requiring them to have access easements.
- Mr. Curl commented that many lift stations failed and suggested that the provisions should be directed towards downstream lift stations.
- Mr. Brooker and Mr. Curl were not supportive of this amendment, and Mr. Brooker felt it was overreach.
- Mr. Brooker has concerns requiring the installation of generators for clubhouses 10,000 square feet or greater in area when some owner's have already incurred the expense (of having their own personal generator) and would in effect be paying twice for the convenience. Mr. Brooker and Mr. Curl were supportive of an "opt-in" incentive for home owners (and condominium) associations (HOAs) in exchange for some benefit for which they would be willing to participate in financially.
- Mr. Brooker asked if a generator is required for the County to engage in discussions with HOAs for the use of their clubhouse lacking a permanent generator.
- Mr. Curl suggested creating a strategic location map wherein it be beneficial to identify areas in the County in need of facilities and target certain neighborhoods given the efforts may be duplicated if other similar services are available nearby (shelters, etc.).

Staff reported:

- The intent of the amendment is to provide options to public sheltering, particularly in newer communities and those in less vulnerable areas. Staff wants to promote sheltering-in-place (at home when safe) and utilizing the clubhouse as a post-emergency distribution point. If a community elects to take refuge in their clubhouse, they now have a local option, but they are responsible for managing their refuge. If it is a government-sponsored evacuation location, then it will be considered a shelter. Staff wants to give a local option to communities to use their clubhouse to access communications, shower and hygiene areas, and obtain emergency supplies.

added expense may create a disincentive to redevelop existing shopping centers, especially in times of an economic downturn.

- Mr. Curl informed staff of the potential for lawsuits to existing sites having conflicts between exterior lighting parking lot landscaping. He mentioned that root barriers do not work 100 percent of the time. With respect to proposed language pertaining to landscape buffers and the requirement that trees be 30-foot on center, Mr. Curl cited the Southern Live Oak as a species that will grow so dense in 20 years that it will conflict with the other trees.
- Mr. Brooker asked if any landscape architects were consulted.
- Mr. Curl questioned whether visibility (to the buildings within a shopping center) was such as issue anymore now that people have smart phones and can use the latest technology.
- Mr. Foley asked if this issue was brought before the BCC by one or several circumstances. Mr. Curl noted this issue was brought to the BCC in at least two circumstances: Riverchase Commons and Pelican Bay Marketplace.
- Mr. Brooker asked staff to send out the emails again to the private-sector landscape architects. Mr. Curl suggested reaching out professionals who usually submit on behalf of the landscape architects (to eventually get the feedback from the landscape architects). Discussion turned again to reaching out to property managers.

Staff reported:

- Staff did not analyze whether an existing parking lot island could accommodate the size of a root ball for an 8-inch caliper tree.
- The intent of the provisions is to plant fewer trees in the buffer to allow for larger spacing between trees. This spacing will provide the visibility that is sought by the property owners.
- Staff received feedback from several of the County's landscape architects.
- Input was sought from private-sector landscape architects without much response and agreed that it may be beneficial to re-contact the professionals and garner input from other sources such as attorneys, commercial property managers, etc.
- Staff felt this tree removal landscaping issue has been brought up to the Board several times.

f. LDC SECTION(S): 1.08.02 Definitions 2.03.03 Commercial Zoning Districts 2.03.04 Industrial Zoning Districts 2.03.06 Planned Unit Development Districts 2.03.07 Overlay Zoning Districts 5.05.16 Medical Marijuana Dispensaries (New Section)

SUMMARY:

This amendment allows medical marijuana dispensaries to become a new permitted land use in the same zoning districts as a pharmacy or a drug store.

DESCRIPTION:

On December 12, 2017, the Board of County Commissioners extended a temporary moratorium on Cannabis dispensing businesses to June 30, 2018. The extended date was authorized to grant staff enough time to analyze and evaluate any changes to F.S. 381.986 relative to the medical use of marijuana that was under consideration by the 2018 Florida

legislature. Because the legislative session ended without an amendment, the Board directed staff on March 13, 2018, to publicly vet a land development code amendment to permit medical marijuana dispensing facilities in the same zoning districts as pharmacies and not located within 500 feet of a public or private elementary, middle, or secondary school. A brief review of the current regulatory framework to medical marijuana dispensing facilities, as distinguished from the cultivation and processing and the delivery of medical marijuana is provided below to clarify some of the administrative provisions of F.S. 381.986. Afterwards, the specific changes to the land development code are described.

The following points were discussed:

- Mr. Brooker wanted to ensure the proposed amendment is consistent with State Statutes. With respect to the maximum number of facilities, the narrative should identify the number of dispensing facilities allowed in the various Counties in the Southwest Florida region. Mr. Brooker asked about signage and the proposed language indicating, “avoid marketing toward children or which promote recreational use.”
- Mr. Curl suggested including a cross-reference to the sign code in the proposed provisions. With respect to exterior lighting within off-street parking areas, he desired more specificity in the ordinance by referencing the Illuminating Engineering Society (IES).
- Mr. Brooker questioned the proposed provisions as they relate to the delivery vehicles. Concern the requirements are above those required for conventional pharmacies and the proposal may face legal challenges.

Staff reported:

- The amendment proposes to regulate medical marijuana dispensaries similar to pharmacies.
- The proposed amendment is similar to those previously brought forth but incorporates additional security and signage measures consistent with State Statute.
- The changes are proposed to address concerns raised by the Board of County Commissioners. When deciding to include or exclude the provisions of the State Statute into the proposed ordinance, Staff chose to focus on retaining “land use” types of issues.
- The Florida Statutes references “adequate lighting.”
- Section 5.05.16 D.1.d requires transport vehicles be housed indoors to deter criminal activity and promote safety.

5. Public comments

None

There being no further business for the good of the County, the meeting was adjourned by the order of the Chair at 5:00PM.

April 18, 2018

**COLLIER COUNTY DEVELOPMENT SERVICES
ADVISORY COMMITTEE - LAND DEVELOPMENT
REVIEW SUBCOMMITTEE**

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These Minutes were approved by the Committee on 8/1/2018, as presented ✓, or as amended _____.