

August 18, 2022
5:05 p.m.

TRANSCRIPT OF THE MEETING OF THE
COLLIER COUNTY PLANNING COMMISSION
Naples, Florida
August 18, 2022
LDC Amendments

LET IT BE REMEMBERED, that the Collier County Planning Commission, in and for the County of Collier, having conducted business herein, met on this date at 5:47 p.m., in SPECIAL SESSION in Building "F" of the Government Complex, East Naples, Florida, with the following members present:

Edwin Fryer, Chairman
Karen Homiak, Vice Chair
Karl Fry
Robert L. Klucik, Jr.
Christopher T. Vernon

ABSENT:
Joe Schmitt
Paul Shea
Amy Lockhart, Collier County School Board Representative

ALSO PRESENT:
Raymond V. Bellows, Zoning Manager
Mike Bosi, Planning and Zoning Director
Heidi Ashton-Cicko, Managing Assistant County Attorney
Derek Perry, County Attorney's Office

PROCEEDINGS

CHAIRMAN FRYER: And without further ado, good evening, and welcome to the second session of the August 18, 2022, meeting of the Collier County Planning Commission.

With the utmost respect for our flag, having pledged allegiance to it already this morning, I'm going to, without objection, ask that we dispense with it a second time.

And let the record please show that it is 5:47 in the afternoon, thus it is after 5:05 p.m., which was the not-earlier-than time for the second session.

And we will need to call the roll, and for that I ask the secretary.

COMMISSIONER FRY: Thank you, Mr. Chairman.

Ms. Lockhart?

(No response.)

COMMISSIONER FRY: Mr. Shea?

(No response.)

COMMISSIONER FRY: I'm here.

Chairman Fryer?

CHAIRMAN FRYER: Here.

COMMISSIONER FRY: Vice Chair Homiak?

COMMISSIONER HOMIAK: Here.

COMMISSIONER FRY: Mr. Vernon?

COMMISSIONER VERNON: Here.

COMMISSIONER FRY: Mr. Klucik?

COMMISSIONER KLUCIK: Present.

COMMISSIONER FRY: Mr. Schmitt?

(No response.)

COMMISSIONER FRY: Mr. Chairman, we have a quorum of five.

CHAIRMAN FRYER: Thank you. And both Commissioner Schmitt and Commissioner Shea have excused absences.

Let's see. Addenda to the agenda, Mr. Bellows. Eric Johnson.

Do you want me to do it?

MR. JOHNSON: For the record, Eric Johnson.

There is an -- there is an addendum, Item No. 9A2. The applicant has requested an indefinite continuance, and so they were respecting -- respectfully requesting that you would not hear this item tonight.

CHAIRMAN FRYER: All right.

MR. JOHNSON: And that the only item that would heard today is Item 9A1, which is the Land Development Code amendment as it pertains to the comparable-use determination.

CHAIRMAN FRYER: Okay. Any further addenda to the agenda?

MR. JOHNSON: No, sir.

CHAIRMAN FRYER: And without objection from the Planning Commission, we will grant an indefinite continuance. There being no --

COMMISSIONER KLUCIK: Mr. Chairman?

CHAIRMAN FRYER: Yes, Commissioner Klucik.

COMMISSIONER KLUCIK: I don't understand. I thought we were kind of not wanting to grant continuances at the last minute.

CHAIRMAN FRYER: Well, that's a good point.

COMMISSIONER HOMIAK: I don't think it was the last minute.

CHAIRMAN FRYER: Yeah. This was -- go ahead, Mr. Bosi.

MR. BOSI: I did send an email on Tuesday at the request of Commissioner Fryer to let the Planning Commission know that that item was being requested for a continuation prior to the meeting. So in the applicant's defense --

COMMISSIONER KLUCIK: No, no. I got the notice. I'm just saying that I thought -- I thought we weren't entertaining ones that were so close to the date.

CHAIRMAN FRYER: Your point is absolutely well taken. And before I call on Mr. French, I want to say, from my perspective, that -- first of all, an indefinite continuance is -- can be interpreted as a signal that it may not come back. But if it does come back, I would hope that it is preceded by a NIM and that it is accompanied by a GMPA proposal so that it can be appropriately considered. And so that's my message to the applicant. And on the --

COMMISSIONER KLUCIK: Am I right that this is the item that we received all the postcards?

CHAIRMAN FRYER: Well, no, no, no. But you're right that this is -- that we had a full discussion about not granting continuances that are late into the process. So my question to staff is, is that -- first of all, it was -- it is inconsiderate to the Planning Commission because we prepare for all the things on the agenda. We did get a few days' advance notice. What's done is done. Is there a cost to the staff, to the county, associated with this continuance that should be reimbursed by the applicant?

MR. FRENCH: Mr. Chair, thank you. Jamie French again, for the record.

And I will only quote our late County Manager Jim Mudd when he said that we are a self-improving -- a continuous-improving agency.

There was some communication on both staff and applicant on this one. Through the review process, we had taken this not just through the review process and DSAC subcommittee, but in looking at this further, we found out that there were some inconsistencies with this area based off what the application had asked for, and we have questions with regards to that. Those were late review comments, and it's probably cost the applicant.

So the cost to the county, yes, we have -- they have applied those -- we've collected those fees, but the cost to applicant has probably been greater because they've really got to reconsider their ask. This is a very unique area. There's some -- there's some dated overlays on this one. This one is just very unique. It deals with the Area of Critical State Concern. It would not be a typical -- let's just say it wouldn't be a typical private land LDC amendment, so this is partially on us, sir.

CHAIRMAN FRYER: Okay. Is it -- am I correct, though, that, appropriately, this should be preceded by a NIM and accompanied by a GMPA?

MR. FRENCH: Well, part of this LDC amendment, if you were to hear it, is that there would -- they were including a NIM going forward with any ask they may have. But I'm going to rely on Mr. Bosi or Heidi to actually qualify that answer, sir.

CHAIRMAN FRYER: With respect to intensity, wouldn't they need a GMPA?

MR. BOSI: The traditional way that would have been submitted would have been a small-scale amendment and a request to rezone. That's the traditional way.

CHAIRMAN FRYER: And a NIM.

MR. BOSI: Well, NIMs would have been most certainly required with those.

But the LDC amendment process was meant to -- was attempted to streamline the process somewhat, and through the course of discovery and late in discovery there is an agreement between the former Department of Community Affairs, which is now DEO, and Collier County related to the Port of the Islands, and it relates to increases in intensity, and it limits that towards what was on the books zoned in 1985.

And we told the applicant late in the game, only a month ago, that it was inconsistent with that agreement. So we were part of -- we agreed that we needed to continue this indefinitely to -- in coordination with the applicant, if they want to move forward, we're going to have to take some more drastic steps of a small-scale amendment to legitimize what the ask is.

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: I would just say, then, that my -- I'm satisfied that it's not

really something that we can really blame, I suppose, on the applicant, so I'm happy to be generous about my vote.

CHAIRMAN FRYER: Thank you.

Commissioner Vernon.

COMMISSIONER VERNON: Yeah, I'm not worried about this situation, but I do think we probably -- because we're all kind of like, we made a rule. There's a rule we have, and it's very specific.

CHAIRMAN FRYER: We did.

COMMISSIONER VERNON: And I think it would be a good idea at the next meeting just to go over it at the beginning of the meeting, and maybe for a couple of meetings, and kind of make sure everybody's on notice that this is it. So when it comes up, we just enforce the rule.

CHAIRMAN FRYER: I don't know if this goes to Ms. Ashton or Mr. French, but in furtherance of what Commissioner Vernon just said, could -- at our next meeting could we be provided with the text of what we decided on that so that we -- full recognition of what we -- how we want things to go?

MR. FRENCH: Yes, sir. There is already an established fee within the Board-adopted resolution for a fee schedule. We'll bring that for you. And we do apologize, and we've apologized to the applicant. As Mr. Vernon has said -- Commissioner Vernon has said, I don't want to say we're up to our ears in work but, unfortunately, this is a -- we missed this one, and so did the applicant, and we had already had our -- we were already in the middle of the process and had it on your agenda, and we do apologize.

CHAIRMAN FRYER: And be sure, please, the very moment you know that this is going to happen, let us know so that we can reduce our workload in preparation for these meetings.

COMMISSIONER VERNON: But I think that the rule required -- and I'm not worried about this one. I'm just saying in the future that I think the applicant's attorney or somebody was supposed to show up and explain.

CHAIRMAN FRYER: Absolutely right.

COMMISSIONER VERNON: And we had a whole process.

CHAIRMAN FRYER: I know we did, yeah.

COMMISSIONER VERNON: And so I'm just thinking, going forward we ought to just have that, pull it out, and enforce it. And if it's a staff issue, we can take a different position.

COMMISSIONER KLUCIK: Well -- and staff -- I mean, in this case, I would expect staff to be the ones that would say, oh, wait. The Planning Commission has this new rule, and we need to follow it and you didn't. I mean, you don't have those people here.

CHAIRMAN FRYER: So please bring the text of that to our September 1 meeting so that we can all be reminded of it.

MR. FRENCH: And there is a line within that for staff error, and so I qualified this as staff error, and I will bring that --

CHAIRMAN FRYER: We accept that.

MR. FRENCH: Yes, sir. And, again, I apologize on behalf of our team, but I will bring that fee schedule to you. Thank you.

CHAIRMAN FRYER: Yeah, it was more than just a fee schedule. It was a rule.

MR. FRENCH: It is a rule, and the fee schedule actually defines that.

CHAIRMAN FRYER: Okay.

COMMISSIONER VERNON: Oh, yeah, I gotcha.

CHAIRMAN FRYER: That's what we want to see. Okay. So without objection, then, we will permit the continuance -- the indefinite continuance, and we will --

COMMISSIONER FRY: Do you need a motion for that or no?

CHAIRMAN FRYER: We can do it by consensus, unless someone would prefer --

COMMISSIONER FRY: No.

CHAIRMAN FRYER: ***All right. Let's see where we find ourselves. We are at PL20220000207, the comparable-use determination Land Development Code amendment, and this matter applies potentially to many land parcels and is non-site specific and is a purely legislative matter. We do not need to swear in witnesses or disclose contacts that we've had, communications that we've had with that.

So with that, the Chair recognizes Mr. Kingston.

MR. KINGSTON: Thank you, Chair. Sean Kingston, senior planner, Zoning Division. This is -- I'm also a certified planner.

This is the comparable-use determination Land Development Code amendment, PL20220000207.

Let me give you the background behind the practicable comparable-use determination. Prior to Ordinance 2020-44, a zoning verification letter would be applied for and then affirmed by either the Hearing Examiner or the Board of Zoning Appeals. This was criticized by customers as confusing and by staff as having no formal evaluation criteria.

Ordinance 2020-44 eliminated this zoning verification letter comparable-use determination and created the comparable-use determination process in the Land Development Code for staff to evaluate each application based on standard criteria.

Staff now provides a written report, including a recommendation to the Hearing Examiner or the Board of Zoning Appeals. That's what's in the Land Development Code currently.

In October of 2021, the Board directed staff to bring back in LDCA -- to bring back an LDCA, a Land Development Code amendment, on this topic after a recent occurrence in the Isles of Capri where the comparable-use determination was applied to conventional zoning districts.

There are --

COMMISSIONER KLUCIK: Commissioner Fryer?

CHAIRMAN FRYER: Commissioner Klucik.

COMMISSIONER KLUCIK: On Page 3A1A, which is Packet Page 5A, on October 12th, 2021, the Board directed staff to bring back an LDC amendment emphasizing the need for having the conditional-use process be applied to CUDs. Is that a typo? Is it CUD, or is it --

MR. KINGSTON: CUD is the acronym for comparable-use determination.

COMMISSIONER KLUCIK: I thought you just said something else, though, that is has to be applied to something else, what you just told us.

CHAIRMAN FRYER: Conditional uses and comparable -- comparability.

MR. KINGSTON: Yes, there's conditional uses and there's comparable-use determinations. What they decided to do in 2021 was bring back the comparable-use determination and apply it on a site-specific basis. Conditional uses are being applied to the proposed changes to the Land Development Code amendment for certain zoning districts to be able to keep it within a site-specific location and also to add conditional-use provisions to keep the comparable-use determination in those districts more compatible with the neighboring areas.

CHAIRMAN FRYER: And I will say that I am personally very satisfied with the work that's been done here because it accomplishes two things that were important to me. First of all, ever since I came on this commission I've been concerned about just the word "comparable," because anything in the universe is comparable to anything else.

COMMISSIONER KLUCIK: Devil is comparable to the Savior.

CHAIRMAN FRYER: Exactly.

So what we really meant and what this -- and it tightens it up because comparability -- in this case it says comparable, compatible, and consistent, and those three things -- I mean, that was already in there, but it highlights it in a better way for me so that it's -- we're getting toward similarity in a sense rather than just the fact that two things are physically capable of being compared, so I like that.

And the other thing I like about it is that it doesn't alter in any respect whatsoever the role

of the Planning Commission. So if the BZA route is the route that is taken, it's going to go through the Planning Commission, and that is very clear in the work that Mr. Kingston did. So I'm quite satisfied with that as well.

And I like the idea of bonding these two concepts, comparable use and conditional use. So from my perspective, I think that this was good work, and I support it.

Anything else, Mr. Kingston?

MR. KINGSTON: Would you like me to proceed about the changes in the amendment itself or the text?

CHAIRMAN FRYER: It's up to the Planning Commission.

MR. KINGSTON: Fine. I can -- we can move on. Would you like to have questions?

CHAIRMAN FRYER: Let's find out what -- how much more does the Planning Commission wish to hear?

COMMISSIONER HOMIAK: I'm good with it.

COMMISSIONER VERNON: I'm good with it.

CHAIRMAN FRYER: Yeah, I am, too. I think -- I think we can save you the time. We appreciate your work, and it was -- it was not an easy piece of drafting, but I looked at it carefully, and I thought you did a good job.

So any further questions or comments from the Planning Commission?

MR. BOSI: And there was one change that staff wanted to suggest to the Planning Commission related to the proposed amendments to the administrative code, and Mr. Johnson can --

MR. KINGSTON: It's on the screen right now.

MR. JOHNSON: For the record, Eric Johnson.

I don't know if Sean mentioned this to you, but this Land Development Code amendment will also have a companion administrative code amendment.

CHAIRMAN FRYER: Yes.

MR. JOHNSON: That will be adopted by resolution. On the screen before you we have circled and highlighted some proposed language that we are now rescinding. We respectfully request that you would not have that particular language included in the administrative code.

CHAIRMAN FRYER: All right. That makes sense to me. And I think our vote on this should be both on the LDC and on the administrative procedure, because they're both -- they both are ordinances going to the Board of County Commissioners.

MR. JOHNSON: Well, technically the Land Development Code amendment is an ordinance. The administrative code change would be a resolution. And it's -- if it's my understanding --

CHAIRMAN FRYER: You may be right. That's a distinction without a difference, though. It's an action on the part of the Board of County Commissioners that should pass through us.

So any further discussion? Commissioner Klucik.

COMMISSIONER KLUCIK: I'm just confused as to the yellow piece being deleted, because I thought that's exactly what you were talking about was it was site specific.

MR. KINGSTON: Well, this is for PUDs. This is the administrative code for PUD, CUDs. There's --

COMMISSIONER KLUCIK: Yeah. I'm asking the Chairman. I'm sorry.

MR. KINGSTON: Excuse me.

COMMISSIONER KLUCIK: I'm just trying to figure out, like, the distinction, because you're the one that -- you know, you mentioned, you know, correctly, and I think --

CHAIRMAN FRYER: Yeah. Well, the concern was that comparable-use determinations weren't site specific, that they would apply to all --

COMMISSIONER KLUCIK: But they should be.

CHAIRMAN FRYER: But they should be, yeah.

COMMISSIONER KLUCIK: Yeah.

CHAIRMAN FRYER: And this is being deleted because it's -- you've got it elsewhere, right?

MR. BOSI: This is being deleted because it is only to that PUD that the question is being -- is being requested, and it's always site specific when it's within the PUD.

CHAIRMAN FRYER: Yeah, so it's already covered.

COMMISSIONER KLUCIK: So it's redundant.

CHAIRMAN FRYER: Yeah.

COMMISSIONER KLUCIK: And just, like -- there's a lot of redundant language in the stuff that we have. Why are you -- I mean, does it cause a problem if we leave it in as well? Is it not only redundant, but it actually causes a problem? I'm just curious. I'm happy to vote to take it out, but --

MR. JOHNSON: Mr. Chair, may I speak?

CHAIRMAN FRYER: Yes.

MR. JOHNSON: By leaving it in, we fear that if you have, say, a shopping center where you have a comparable-use determination approved in Bay 1, and that would not allow someone to have the same thing in Bay 7 if we kept that in.

COMMISSIONER KLUCIK: Got it, okay.

MR. JOHNSON: I think that's a little bit of an overreach.

CHAIRMAN FRYER: Any further questions, comments, or discussion on this?

(No response.)

CHAIRMAN FRYER: If not, I would entertain a motion to approve both the LDCA and the administrative procedure changes as presented.

COMMISSIONER FRY: Move to approve the ordinance and the resolution.

COMMISSIONER HOMIAK: I'll second.

CHAIRMAN FRYER: Any further discussion?

(No response.)

CHAIRMAN FRYER: If not, all those in favor, please say aye.

COMMISSIONER FRY: Aye.

CHAIRMAN FRYER: Aye.

COMMISSIONER HOMIAK: Aye.

COMMISSIONER VERNON: Aye.

COMMISSIONER KLUCIK: Aye.

CHAIRMAN FRYER: Opposed?

(No response.)

CHAIRMAN FRYER: It passes 5-nothing. Thank you very much.

MR. JOHNSON: Thank you. And also thank you, everyone, for accommodating now a nighttime hearing. So we do appreciate you, and also this will happen next -- September 1st.

CHAIRMAN FRYER: Yes.

COMMISSIONER FRY: Yeah, can we please have another one?

COMMISSIONER HOMIAK: So we only have -- we only have one thing on the LDC amendments that night, because there's --

MR. JOHNSON: No, we're going to have -- well, yes, yes, at the nighttime. It's the medical marijuana Land Development Code amendment. We're going to have --

COMMISSIONER HOMIAK: That's the only one? There wasn't two?

MR. JOHNSON: That's the only one that would require a nighttime hearing. There is another --

COMMISSIONER HOMIAK: Oh, oh.

MR. JOHNSON: -- Land Development Code amendment, but that would be during the

daytime hearing.

CHAIRMAN FRYER: I don't think the medical marijuana thing was in the look-ahead, was it?

COMMISSIONER HOMIAK: No, it wasn't. That's why I was asking. And I noticed that it did say, when Ray sent it out, it said "continued" for the one we had this big discussion about today. We knew that a little bit before every said they did, but...

MR. BOSI: And just to let you know, the medical marijuana will take some time. There is some public interest in that item, so you're going to probably have 35 to an hour of public, you know, comments related to, you know, the customary discussions that we have.

CHAIRMAN FRYER: Yes, I understand.

COMMISSIONER VERNON: I apologize for this, but I had my phone off when you said the times for the September 1st and September 15th. What are the times?

MR. BOSI: September 1st is a 10:00 start. That has Isles of Capri. That is going to be a long meeting. I anticipate that we are going to go from 10:00 to probably 7:00 on the 1st.

COMMISSIONER HOMIAK: And 5:05.

MR. BOSI: Well, I mean, that's both meetings.

COMMISSIONER VERNON: Right, right. I got you.

MR. BOSI: And then the 15th is our normal 9:00 start time.

COMMISSIONER VERNON: Got it.

CHAIRMAN FRYER: All right. Is there any old business to come before this session?
(No response.)

CHAIRMAN FRYER: If not, any new business?

(No response.)

CHAIRMAN FRYER: If not, any public comment on matters not on the agenda?

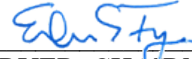
(No response.)

CHAIRMAN FRYER: Seeing none, without objection, we're adjourned.

August 18, 2022
5:05 p.m.

There being no further business for the good of the County, the meeting was adjourned by order of the Chair at 6:07 p.m.

COLLIER COUNTY PLANNING COMMISSION



EDWIN FRYER, CHAIRMAN

These minutes approved by the Board on _____, as presented _____ or as corrected _____.

TRANSCRIPT PREPARED ON BEHALF OF FORT MYERS COURT REPORTING BY TERRI L. LEWIS, RPR, FPR-C, COURT REPORTER AND NOTARY PUBLIC.