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

Naples, Florida, October 17, 2023

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 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 (excused)
Robert Mulhere
Mark McLean
Jeff Curl
Blair Foley

ALSO PRESENT: Eric Johnson, LDC Planning Manager
Richard Henderlong, Planner III
Marissa Fewell, Planner III

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

Acting Chairman Foley called the meeting to order at 3 p.m.; a quorum of three members was present; a fourth arrived later.

2. Approve Agenda

(No changes)

Mr. Curl made a motion to approve the agenda. Second by Mr. Mulhere. The motion passed unanimously, 3-0.

3. Old Business

(None)

4. New Business

5. PL20220005067 – Scrivener's Errors

Ms. Fewell introduced herself as a new LDC team planner and said the first item involves a Scrivener's errors amendment. The DSAC-LDR previously reviewed some of these errors and updates on August 24, 2022, and approved them. They were taken to the full DSAC November 2022 and approved. Since then, updates and errors were added to the amendments. Those changes are in yellow highlighted text.

Mr. Mulhere said they all seem to be updates, not Scrivener's errors, just cleanup and nothing substantive.

Mr. Mulhere made a motion to approve the Scrivener's errors and other changes. Second by Mr. Curl. The motion passed unanimously, 3-0.

a. PL20220006373 – Mobile Food Dispensing Vehicles and Food Truck Parks

Mr. Henderlong told the subcommittee:

- This amendment was directed by the Board of Zoning Appeals in October 2021. It is a new LDC section 5.05.16, Mobile Food Dispensing Vehicles and Food Truck Parks.
- There's also an Administrative Code amendment that goes with the new section of code, Chapter 4 R.
- He gave an outline to a PowerPoint presentation. The overview covers: the amendment's history, the current statutory regulations, procedures relating to licensing for mobile food dispensing vehicles, operations and food permits, including definitions, followed by staff research and findings of other communities' standards, details of the proposed amendment, and some textual changes added since the last initial packet.
- In October of 2021, the Board of Zoning Appeals prohibited mobile food truck applications permanently located with other entertaining activities, such as a bar, dance pavilion, or music and outdoor seating.
- The BZA directed staff to bring back an amendment to allow for the conditional use of mobile food trucks within base-zoning districts on a specific parcel of land. They also directed staff to look at the use so it would not require a Zoning Verification Letter of Approval by the board or a Comparable-Use Determination.
- Concerns expressed that would affect the surrounding neighborhood were: noise, glare, odor, traffic and setback requirements. Staff were tasked with identifying similar characteristics with other permitted uses within the base-zoning districts and look at hours of operation, traffic volume, number of vehicles, types of parking spaces and other best practice activities.

Mr. Mulhere said the BZA directed staff to make food truck parks a conditional use. Obviously, you're made them both permitted and conditional.
Mr. Henderlong said correct, we'll talk about that and go into the specifics between the two.

Mr. Henderlong continued his presentation:

- Florida Statues, Chapter 509.102 is the driving force for mobile food dispensing vehicles and their preemption. There are three significant subsections. The first defines what a MFDV (mobile food dispensing vehicle) is – any vehicle that's a public service food establishment. The key is public-service establishment, self-propelled, or otherwise moveable from place to place, and it includes self-contained utilities, including, but not limited to, gas, water, electric, or liquid-waste disposal.
- Subsection 2 specifically says the regulations preempted to the state are limited to licensing, registrations, permits and fees. Local governments cannot prohibit mobile food dispensing vehicles from operating within the entirety of a county or other local governmental jurisdictions. Some jurisdictions do prohibit them.
- The last section of the statute states the statue may not affect the local government jurisdiction's authority to regulate the operation of the vehicles, other than the regulations in Subsection 2. These are the guiding principles to follow.

Mr. Mulhere said the way he understands that is that the government preempts the local government from that, whether some do or not, they're just taking a chance that they don't get challenged. The statute limits prohibiting the use throughout the entirety of the local jurisdiction.

Mr. Henderlong said that's correct.

Mr. Henderlong continued his presentation:

- A second provision relates to the food product regulations of what is being sold. It is one that some staffers on some permits were not aware of, Food Product-Statutory Regulations, Chapter 500.12. All mobile food trucks, food establishments and retail food stores must apply for and receive a food permit. It is no different for a mobile food dispensing vehicle-truck. By this chapter, the food permit is subject to a "mobile food establishment" as defined by statue.
- The Florida administrative code gives a definition for mobile food establishments – food establishments that are self-propelled, otherwise moving from place to place, such as a truck, trailer or similar self-propelled conveyance or a non-permanent kiosk or a table where prepackaged food products are sold. An indication is a watercraft that on waterways has to have a food permit from the Florida Department of Agriculture and Consumer Affairs.
- The Florida Department of Agriculture and Consumer Services is the agency that issues the permit before any operation can begin. The food permit must be pulled first and it may be associated or operating in conjunction with another permitted food establishment, such as a common restaurant. You can have a restaurant (for example, Texas Tony's Rib & Brewhouse or Stevie Tomato's Sports Page) and a mobile food establishment that are issued under the same (blended) permit.
- The last primary permitting agency is the Florida Department of Business & Professional Regulations, which is responsible for issuing a mobile food dispensing license. It licenses and regulates all businesses, including all types of public food establishments. The license is issued under the department's Division of Hotels and Restaurants. There are seven different types of food establishments and we're focusing on mobile food dispensing vehicles.

Mr. Mulhere asked if the DBPR license includes the inspection and sanitary requirements.
Mr. Henderlong said the Department of Health would look at that. He'll discuss hotels and restaurants later. That is a division of DBPR.

Mr. Henderlong continued his presentation:

- Other common code elements were studied in 20 Florida communities, of which five were Florida counties and five were out-of-state, and also current permitted and licensed establishments within Collier County. We took a broader look at Texas, California, North Carolina, Arkansas and Oregon. North Carolina and Texas have some unique and very good regulations.
- Staff looked at definitions and in what type of zoning district mobile food dispensing vehicles would be allowed, either, by right, special exception or conditional use. Typically, they are located in Commercial, Business or Industrial zoning districts. He has a seven-page spreadsheet of about 30 different communities that go through that, but we're not going to go into detail. From those, food truck parks and mobile food-dispensing vehicles are either regulated in commercial, business and/or industrial zoning districts. That is the primary principle, three-based districts that food truck parks are located in.
- Next, staff looked at the minimum parcel and lot area, number of mobile food dispensing vehicle related to a park, and parking spaces on private property. It was interesting looking at cross-shared parking easement agreements and whether they have to disclose that they have private authorization, even on a temporary basis.
- Generator noise and odor was an important part because some are very restrictive, more so than Collier County does for generator noise. A couple have done that, so we felt that's unique to that community and not worth trying to craft a regulation on that, other than to say that it could not violate our noise regulations.
- Stabilized surfaces. There are a variety of reasons why stabilized surfaces because if you have multiple types of mobile food trucks, such as a trailer, trucks motored by four wheels or a concession trailer with two vendors, they park and the exhausts come in on temporary basis. If under grass, it can start fires, so staff agreed we were not going to set a standard for the size. Originally, they were contemplating the size of the pad, but decided against that when they looked at the variable types of trucks and trailers sizes. He has a spreadsheet that details how that works, what's typical and what isn't.
- The minimum and maximum number of trucks allowed is detailed on another sheet for density. Staff is recommending a density of five food trucks per one acre for a food truck park.
- Setbacks for the base-zoning district. The majority of communities prohibit mobile food-dispensing vehicles being in any setbacks within the front, side, or rear, which was surprising, even in commercial districts. Even different distances from property lines. We have a recommendation we think is reasonable for the subcommittee to consider.
- The proximity of setbacks to residential uses or dwelling unit and setbacks of fire hydrants, schools, streets, and other dispensaries internal within the design itself. Setbacks are for the building setback.
- Access to restrooms and outdoor seating. There are three types, temporary, semi-permanent, or permanent placement, which Miami-Dade calls it "stationary." They regulate stationary, 24 hours, limited to 2 or 3 times a weekend and food truck park is not allowed.
- Time periods and duration of hours of operation of food trucks. We recognized there had to be a limit for transient sales hours. Those are trucks we define in our code as four hours or less in duration. Four hours are defined as a one-hour setup and a one-hour breakdown, so it's really a two-hour window of operation.
- Number of times during calendar year. We looked at how many times they're allowed during the calendar year under a temporary-use permit. Our code allows placement for 28 days in a calendar year. We decided internally with staff that anything after 28 days could be defined as permanent use. There's an extension provision in the temporary-use permit that allows it to go beyond 28 days. There's a smaller period that they can be granted, but it requires Board approval.
- Daily removal of a mobile-food dispensing vehicle. This is very complicated. See the exhibit for the definition in your document on what is a "self-sufficient mobile food-dispensing vehicle." It

means that if it's on-site and not self-sufficient, it must have a hookup to utilities and a sanitary waste facility. If it's self-sufficient, it's going to leave the site to go somewhere to a commissary to disperse and get rid of waste, grease, any hazardous materials, etc. That's the importance of understanding how a commissary functions. A commissary can be another restaurant or an industrial location where water and sewer by the state Department of Health is allowed to accept. We're cleaning that up in our applications to help define the business operations. After all this is identified, we want to move it forward in our applications.

- Restrictions. No alcohol sales, drive-thru sales, restrictions on amplified sound and outdoor entertainment, with an exception for a special event. This was the thrust of Celebration Park's problem. The combination of alcohol sales, some activities for drive-thru and some with loud noise. There were a lot of code violations (see exhibits) for amplified sound. All those factors combined with outdoor entertainment and stage entertainment prompted objections from many surrounding residents. That could be resolved with the proposed amendment.
- Parking requirements, signs and lighting for a food truck park were studied.
- The amendment allows the placement, operation and permitting of each mobile food dispensing vehicle as an accessory use. It means it's a primary use for 24 hours or less, and it's not self-sufficient, so it must return to a commissary. We can allow that and issue a permitted use for that, but that truck cannot be there overnight. It has to report, by statutory requirement, on a daily basis to the commissary.
- Permanent use. The truck would become a permanent use in a park only through a conditional use if it's associated with the sale of alcohol or an amplified sound and provides outdoor entertainment. We targeted the following districts: C-3, C-4, C-5, Commercial, Business Parks, Industrial, Public-Use areas, and all PUDs that are Community Facilities, Commercial, Industrial, and Mixed-Use districts.
- In Section 1.08.00, there is a mobile food dispensing vehicle definition, which follows the state statute, word-for-word. We have a good definition for a food truck park that we think is reasonable. We're also clarifying the temporary, semi-permanent, permanent and accessory use. Those are four actual elements rather than three, crafted in guidelines used to craft the language.
- Generator options. We limited operating generators closer than 20 feet from a property line, unless there is an intervening six-foot wall. We had more restrictive language that was closer in other areas with decibels and other communities do that. Some of them are highly restrictive – 100 feet or 50 feet from residential. It varies for different communities, but we narrowed it down for a food truck park to 20 feet. These are permanent, distinguished separately from temporary special events, which get some relief.
- Trash and Access to Restrooms. There should be a trash receptacle and access to restrooms for the operator and patrons. Staff realized that with some permits approved in the past, including the Hitching Post (one of three Jeff Curl worked on), there must be a way for patrons or vendors, particularly when they go past the four-hour window, people need to know where they can go to a bathroom. Staff's position was not to allow Port-a-Johns. If it's near a retail strip center, staff would ask an applicant to provide a letter of agreement demonstrating one of the tenants will allow them to use their restroom, so a vendor who's permanently placed there can direct patrons to the restroom.
- Temporary basis. Staff confirmed MFDVs can operate on a temporary basis for no longer than 28 days. This was a gray area that business operations had struggled with. Most permits in the past were done by temporary-use permits or special event.
- MFDV numbers. There were over 60,000 permits for food establishments issued in the state within seven regions. Of those, 7,300 are mobile food dispensing vehicle licenses. We have the fourth largest number of mobile food dispensing units for our region, which covers a five, six, or seven county area. The demand is high. The top category is for seating restaurants at 49%. The next largest category is mobile food dispensing vehicles at 12.5% for statewide licenses.
- The amendment exempts mobile food trucks that are transient and do not stop for more than four hours at a location. As a principal use, it's important to make sure, they don't extend beyond the

operating hours when there is an accessory-use associated with the retail center. They must shut down and close doors as a security issue, life and safety.

- Prohibitions:
    - No placement for a food truck, except in a food truck park, on a vacant or unimproved lot. Staff received feedback about fire concerns, life and safety. That's consistent with most other communities.
    - No placement in required setbacks or parking spaces, unless dedicated to a separate site. If there are accessory spaces, it's fine for parking. If not, a pad or dedicated area must be identified.
    - Parking is prohibited on open-space preserves, landscape buffers, conservation or drainage easements, public or private rights-of-way or access easements. They cannot operate in a manner that would block access ways, walkways, driveways, loading zones, or interfere with vehicular or pedestrian circulation. It is a life, safety and welfare issue.
    - Alcohol sales, and amplified sound are prohibited unless approved for a special event or temporary use. The Division of Alcohol, Beverages & Tobacco (DABT) under the state DBPR issues a three-day license for consumption on-premises for special events. (He passed out an informational package on food establishment special events state guidelines.) County Business Operations found some vendors come in with events, but they've never applied for or received a permit. They do not allow special events until they get this three-day permit for licensed sales and consumption. Only one Florida City, Gainesville, by special state legislative act, allows consumption on premises 24/7. There are different levels of licenses issued by DABT and the City of Gainesville license is called a "Mobile Food Dispensing Alcohol License." Any MFDV can sell alcohol, restricted within the city.
    - Operating longer hours than the primary business location, unless approved for a permanent location or by special event. That will allow a threshold for hours. Paradise Coast Sports Park's night activities is why this provision is there.

A brief overview of design standards was given:

- SDP approval and permits. We came up with a density of five pads per acre. Gainesville is at two per half-acre, four for 1 acre and is the most restrictive. They have a provision for special exception for six pads or more, and a special exception for up to 12. Fort Myers is very limited. We feel we're generous.
- Celebration Park has eight mobile food trucks with offsite parking is 1.68 total acres so it's within the threshold. We felt it's a reasonable number that could work.
- At the Hitching Post, we estimated three trucks per half-acre. (Mr. Curl noted that in one area there's one truck by the road). Staff was unable to figure it out. We just did some general numbers on it. It's a full estimate, but technically we can't put a density on it because of the whole tract.
- Mother Trucker has one on 1.4 acres. KD2 (a gas station convenience store at 9555 Tamiami Trail East, aka Flash Car Wash & Convenience) is one on a total of 3.91 acres. Collier Area Transit is one in Immokalee is on a total of 8.84 acres. We don't have an acreage requirement for Airport-Estey Avenue.
- The Brewing Company, which Blair and Jeff both worked on, has a 1.4-acre site. Isles of Capri had nine trucks on a total of 2.21 acres. Rooftop of Riverside in Bonita Springs, which is under construction, is on two parcels. One is on 0.45 acres, which has the restaurants, bar, etc., and there's a second 0.45 acres to handle parking, so it's six on 0.9 acres, which is pretty intense in an inner city. We thought that countywide, you'd have to seek a deviation if you come in closer and are more intense and it was needed. That's the best way to handle it.

Mr. Henderlong presented a slide on density from other communities that are identified in bold criteria. It supported staff's recommended density at five vehicles per acre.

- Last week, Lee County opened the "BackYard Social" food truck park located in Trade Port Center off of Ben Hill Griffin and Alico Road. The project has eight food trucks under an 8,000 square foot roof, a bar, outdoor entertainment and games. The operating hours are seven days a week compared with Celebration Park's six days a week.
- Because of the Live Local Act, other criteria considered were not included as it would be more burdensome or restrictive. Setbacks to property lines would remain the same as for the base-zoning districts, fire hydrants, schools, separation distance between vehicles by fire code at 10 feet, and the same for fire hydrants. Most research supports 15-foot distance separation from fire hydrants.
- Other criteria are access to restrooms and outdoor seating. When a mobile food truck's operational hours are four hours or more, patrons and the operator employees should have access to a public restroom or Port-a-John with a sink and tank or an access agreement with another retailer's restrooms within a strip center.
- Any recommendations and comments?

Mr. Mulhere responded that:

- Density is probably OK. It's tough to use Celebration Park as an example. For whatever reason, they were approved with 10 or 12 parking spaces and obviously there was a need to add more parking and then they got the off-site parking across the street. He worked on that part of the project. She originally had eight to 10 at one point, but it functions OK now for density. He's not talking about noise or amplified sound.
- He thought five was low when he first looked at it, but based on everything sent him, it seems like that's probably OK.
- He doesn't understand the connection with amplified sound or alcohol. The problems are generally related to amplified sound and proximity to residents. He doesn't know how having a beer with a hot dog creates problems. If there's no amplified sound, you could have someone out there playing guitar. There's probably some amplification of noise without amplified sound just from having people drinking, partying and getting louder.
- Did you think about or consider, particularly where it's permitted by right? C-3 is probably the district that has the most residential closest to it. C-4 a little less and C-5 a little less than that bigger commercial parcel. Did you consider saying where it's permitted by right, then you'd have to have a distance separation from any residentially zoned property? We do it for gas stations and establishments selling alcohol for on-premise consumption if they're in proximity to a school, park or public playground.
- Amplified sound is clearly a trigger in proximity to residential, even if that noise doesn't cross that decibel threshold. There should be a process if you're going to have amplified sound. Any large food truck park is going to want to have amplified sound, like Estey Avenue.
- He's not sure no alcohol should be the measure that says whether it's going to be permitted or conditioned. The greater impact is amplified sound, but he's open to hearing the rationale for that. If you serve alcohol, does that necessarily create a problem because you do have restaurants with outdoor seats that sell alcohol.

Mr. Curl said that alcohol usually ends in noise complaints. Stevie Tomato's is a good example.

A discussion ensued and the following points were made:

- Distance to the residential property is usually the criteria and what causes the complaints.
- Those criteria have been in there for decades so the county should review that.
- With a conditional use, you could look at four or five criteria and make an argument on those, compatible or not compatible.

- We're considering a permitted use in C-3 because we can't be more restrictive due to Senate Bill 250. We were more restrictive at one time. We don't have pending provisions on the books for food truck parks, so that's why legal staff made that decision to proceed.
- There are parallels for amplified sound outside. That came up with Sports Page at Immokalee and 951 about 10 years ago when Mark Strain was involved. They did an outdoor area on the south end of the building. Pebblebrooke Lakes is next door and it caused a fiasco. They had to go through several iterations to get that figured out. You already have some language within the code that governs proximity to residential: 20 feet for amplified sound, but no way unless you have a 12-foot wall.
- That's why staff came up with the six-foot wall and the County Attorney agreed to it.
- It's not allowed as a permitted use by right. You cannot have any alcohol or amplified sound. For alcohol or amplified sound, you have to go through a public-hearing process for a conditional use and those conditions would be assessed.
- Mr. Mulhere stated that under the conditional use process there are requirements and asked if there should be some criteria for consideration that are not expressly stated in the three or four conditional use criteria, such as impact on … or is it already implied in the conditional use criteria? Maybe they should be stated.
- Mr. Johnson said the County Attorney's Office advised us that we shouldn't touch that.
- Mr. Henderlong said we had three other conditions we couldn't add due to Senate Bill 250.
- We can come back after October 2024. The amendment isn't as restrictive as the county wanted it to be.
- Code Enforcement wants a standard for measuring generator noise. Under the current noise ordinance, they're limited to where they can go and it depends upon the date, time, etc. Some communities have good regulations, such as measuring 10 feet or 20 feet from the property line. We'd like to see more restrictive language but we can't due to Senate Bill 250.
- Jeff Curl asked how they are measured for gas stations and thought generator decibel regulations were set after Hurricane Irma. We should lean on similar amplified sound measures for conditional use.
- There were decibel regulations for generators for fueling stations and restrictions for lighting. Staff would like stronger restrictions for generators and even on how they are oriented for gas and fumes and between two trucks. Staff had a greater separation between two trucks so the rear of the truck's exhaust was separated, so if you have a trailer, you pull the trailer up and need a longer distance between another trailer to get it in and out, particularly if there's a fire.
- That's not as crucial because the Fire Marshal does a walk through and they would determine where they are in relation to flammable materials, the distance between spaces, emergency, egress, etc.
- Some fire officials are here today and monitoring the discussion. The fire official's violations cited at Celebration Park are a constant problem, most recently where picnic tables are located.
- The County Attorney's Office says if it's not in the LDC, it falls to the Building Department or the Fire Department for enforcement. On the other hand, how far can we go to implement it into the LDC and then what is the penal recourse if a Code Enforcement officer finds violations?
- It's an interesting parallel, the difference between an operator versus a business owner. One bad actor in the food truck park does not comply. The parallel is an Airbnb registration with the county.
- Food truck parks should register their operators, just like short-term and vacation rental registrations. There should be a contact person on-site at all times to call in case of problems or emergencies because at Celebration, there was no one to go to and call the police. (Mr. Mulhere said there was a manager there.).
- The Administrative Code requires a contact person.

- Mr. Mulhere asked if these would be approved beyond a 28-day temporary use through an insubstantial change to the SDP, when you have excess parking spaces, SDPA? Staff responded, yes.
- Staff or the Fire Department can put any conditions into that approval, such as something unique to ensure public health, safety and welfare, such as related to propane tanks. That could be a condition or stipulation. Then you'd have recourse because that's a life-safety issue.

Mr. Curl noted the Hitching Post isn't really a food truck park. They didn't dedicate parking spaces, they don't have port-a-potties, they have a pull behind that is ADA accessible while port-a-potties are not. When activity happens at night, the businesses are closed and they're using the parking spaces for their business.

Mr. Mulhere noted there are two different discussions: the number of spaces required for a food truck and where you locate a food truck you cannot occupy a required space but can occupy an excess parking space.

Mr. Johnson said we're talking about required parking spaces. There's also a difference between accessory use, accessory to a principal use, or a bonafide food truck park, which in itself is a principal use.

Mr. Henderlong detailed how it works in terms of the Hitching Post's permit:

- It's one space per 80 square feet for public use areas, including outdoor eating areas or one per two seats, whichever is greater.
- For non-public use areas: kitchen, storage or a freezer, it's one per 200 square feet.
- Cormac Giblin preferred this standard rather than one per three spaces per mobile food truck. He explained to Cormac that you cannot measure some of them because they do not have kitchens or storage and some are trailers of different types. But you're still going to attract the same number of people for eating and other communities have codified three spaces per one truck

Mr. Mulhere said he thought he saw one with four.
Mr. Henderlong said there is another one for four and some are even higher. The one space per four applies to outdoor seats. See page 9.

A discussion ensued and the following points were made:

- Five mobile food trucks on 1 acre, you would have 15 parking spaces without seating.
- If you had 100 seats, you'd need another 25 parking spaces.
- Mr. Curl said there are times in Bayshore where you have to park across the street at the marina to go to Ankrolab Brewing Co. Half the time, it's full, with a food truck in the back.
- Bonita Springs' code for Rooftop at Riverside food truck park is three spaces per mobile vendor, plus three spaces per 1,000 square feet of a restaurant/bar, plus one space per 24 outdoor seats, plus 10% of the standard parking requirements for handicap spaces. It's in the downtown core area, where shared parking can occur.
- Mr. Foley said we are discussing different components of the amendment and asked if staff wants them to go through line by line. What are you looking for from us today as an action?
- Staff is looking for a recommendation today, "as is" or with conditions.
- The reference to 5.05.16 is the new code section and criteria.
- It's broken down into standards applicable to all MFDVs and standards applicable to food-truck parks. It has been the Board's direction to require conditional use approval for any that have alcohol, amplified sound with outdoor entertainment.

- Mr. Mulhere said there could be more changes but understands the county is limited by the State Statutes, (Section 14, Chapter 2023-304, aka Senate Bill 250), which prohibits adopting anything more restrictive.

A discussion ensued over access to restrooms on E.2 on page 10 and utilizing an adjacent space.

Mr. Henderlong said a building, as the primary business, must have a restroom. As an accessory use, when they apply for the MFDV, they just need to show they have access for the employees and patrons of the MFDV to have access to the restroom.

Mr. McLean said the bigger issue is from a design standard and noted:

- He's always pressed by building officials or building departments when designing a restaurant, the "potty parity" of plumbing codes and X number of patrons has X number of fixtures.
- If he has a food truck pull up next to it, the plumbing codes says X number of patrons has X number of fixtures and that usually constrains him because although he needs to hit 150 patrons to get a liquor license for the restaurant, if he hits 151, he's getting into additional toilet fixtures.
- If he hits 150 and his toilet fixtures are right, now we're going to allow them to park at a building next door and over utilize that?
- What happens if that building sells? Does the agreement have to be renewed?

Mr. Henderlong said that's a good question. He'll talk to the Building Department to find out if you add an additional number of patrons from food trucks. He doesn't think it would be an issue since it did not rise to the occasion at Hitching Post. It was a non-issue. We are looking for a statement that they're not going to prohibit a food truck operator from directing patrons to use the restroom.

Mr. McLean noted that the Hitching Post has mobile port-a-potties that are ADA compliant, with ramps to a mobile platform for a pull behind trailer. There is a concern that the operating hours are not the same as the Hitching Post. Access to the facility next door may be available at lunch time but not at dinner.

Mr. Johnson said the question is a Florida building code type of question. This is a Land Development Code amendment that says an accessory unit must have some sort of access to a bathroom.

Mr. Foley said if you ran short, it would not be from a sanitary perspective, the lateral would be sufficient but the water meter may have to be upsized.

Mr. McLean asked if we are opening up a Pandora's box. He has a restaurant client who is contemplating an outdoor terrace (patio) to an existing restaurant at the end of a plaza that increases the capacity of the restrooms. They have to cut up the floor and provide additional plumbing. If a food truck was parked outside and next to the restaurant, he asked if the restroom would have to be upgraded.
Mr. Henderlong responded not when it's allowed by a temporary-use permit and the land owner is in agreement with the use.

Mr. Curl asked what is the trash enclosure or facility for a food truck park, 12 x 24?
Mr. Henderlong said a trash receptacle is required for each mobile food truck that is an accessory use. The size would be determined at the time of SDP approval by the Solid Waste Department.

Mr. Curl made a motion to approve PL20220006373 – Mobile Food Dispensing Vehicles and Food Truck Parks, to incorporate the term "full cutoff" lighting fixtures on page 11 and that an operator is introduced as a point of contact, on-site at all times to address restroom availability, fire and emergency situations. Second by Mr. McLean. The motion passed unanimously, 3-0.

Mr. Johnson said this will go to the full DSAC in November.

c. PL20230013966 – Wireless Communication Facilities

Mr. Johnson said this amendment would change several sections of the code. Marissa will be the primary person on this item. He noted that Margaret Emblidge (director of planning for ABB, Agnoli, Barber & Brundage) is sitting in the audience, as is Zoning Director Mike Bosi.

Ms. Fewell told the subcommittee:

- In January, the Board of County Commissioners directed staff to develop amendments to our current Section 5.05.09, the regulations for communication towers.
- We're proposing to change that nomenclature to "wireless communication facilities."
- Staff hired consultant Margaret Emblidge to assist us with researching and rewriting the code.

Mr. Bosi asked to add some information and told the subcommittee:

- We also received assistance from Verizon and SBA, a tower company and a wireless communication provider, that both were integral with the drafts, developing how to rewrite the code, trying to understand issues the industry faces in terms of their system deployment, and trying to find the right amount of flexibility we need to provide for wireless communication facilities throughout the county.
- Anyone in the Estates knows the issues that we have with some spotty coverage.
- With 90% of all emergency service calls coming from cell phones, it's critically important that this is a service that we get right and that we have a robust system, so we appreciate the contribution from those partners, who helped create the basis and a lot of the direction for the draft.

Mr. Johnson said the way the draft is set up is that we'd be amending multiple zoning districts to include the term "wireless communication facilities." Page 30 is where most of the new regulations are. We'd be replacing the existing language for "communication towers" with "wireless communication facilities." If there's anything you want to discuss, we can answer your questions.

A discussion ensued and the following points were made:

- Everything once was tied to a specific height when communication towers were involved and there were always exceptions for height for towers within the zoning district.
- Now there's a specific section within the code that enumerates allowable heights within the various commercial, agricultural, industrial and residential districts.
- There's a difference between towers on the ground and building mounted. The school board allowed towers to be leased on school property and there's a Fifth Avenue South building with a mounted tower. You can't screen that with trees and a 6-foot wall.
- That's covered under a screening section, G, on p. 37.
- There's a provision for adding communication towers to the utility site within the Orange Blossom Ranch. We said it makes no sense to have a concrete wall landscaped outside of that. There's also another regulation underneath screening 3.B, at the discretion of the County Manager. *"Some or all of these landscape buffering requirements may be displaced to the road right-of-way landscape buffer located in a parcel, when it better screens the tower,"* so that gives the county the flexibility to displace all this.
- Screening in the Estates says, *"The wall or fence shall be 100% opaque, with a minimum height of 8 feet, with a maximum height of 10 feet. A minimum 10-foot-wide Type-A Buffer along the outside perimeter of the wall or fence shall be required. Tree plantings within the buffer shall be 12 feet in height at the time of planting."*
- Developers are going to put in the cheapest wall they can and if I'm a neighbor, I don't want to look at the wall and tree trunks. I'd rather have something at the base to screen part of the wall.
- That could be a subcommittee recommendation.
- We used to have trees every 25 feet on center, too. In the old code it's fine.

- A Type-A Buffer is: trees every 30 feet on the center. It does not have a hedge, so it would not screen the wall. A neighbor in the Estates would be looking at a wall at ground level.
- There needs to be a buffer, a 3- or 4-foot continuous hedge, except for an access gate.

Mr. Johnson suggested the subcommittee could incorporate that into a motion.

Public Comment:
Attorney James Johnston of Shutts & Bowen in Orlando, representing Verizon Wireless, and Jonathan Montenegro, real estate manager for Verizon Wireless, introduced themselves.

Attorney Johnston told the subcommittee:
- We appreciate getting to work with staff on this. We like the latest version, but there are a few things we were hoping to discuss.
- The overarching comment was ensuring the processes for each situation are clear.
- For a tower that's permitted in a zoning category, is that directly a building permit or is it a Site Development Plan, plus a building permit?
- For conditional use, is it just conditional use to a building permit, or is there a Site Development Plan permit?
- On page 33, it talks about a situation. Any new WCF that requires both a Site Development Plan and building permit may be processed concurrently but at the applicant's risk, so is there a time when you wouldn't need both?

Mr. Bosi said the Site Development Plan, or a Site Development Plan Amendment always will be required. If you need the conditional-use, you need a Site Development Plan and a building permit in all instances.
Attorney Johnston said that's what they thought. They just wanted to make sure.
Acting Chairman Foley said it just gives you the ability to move forward with those processes concurrently, but if there are comments or changes as part of the Site Development Plan, it may affect that.

Attorney Johnston responded that:
- We understand you're at risk for doing that. The way the language read made it sound like there might be a situation when they were both not required.
- In F (Design and Development Standards) 1.g, p. 33-34, we discussed that the zoning manager has the ability to move the landscaping out to the perimeter of the property instead of having it around just the wall, which makes sense. We've also seen in a lot of other codes where if there are portions of the tower compound that are facing away from any public viewing – facing property that's not developable, etc. – it gives the zoning manager the ability to waive providing landscaping on those sides of the tower compound where it's not serving any purpose.
- If we could request the ability for the zoning manager to do that added into the provision to allow them to move it away from around the tower compound or could be request that and do we have to get a conditional use for that request?
- If so, then it should be added to the F.1.g section involving conditional

Mr. Curl said if a tower was set off the road in the Estates, where the roads are low and were never constructed at the correct elevation, that would elevate the base of your tower because he assumes FEMA would come into play so you could have power. A buffer at the property lines by the road would depress the visual shielding of the wall. He'd support keeping the landscape around the base of the wall, which may sound ridiculous to you, but it would be better visually. As far as facing an undeveloped lot, there are many lots that are undeveloped that could be developed into homes, so just because you're there first, it wouldn't preclude you having to meet those requirements to screen on that side.

Attorney Johnston asked what would occur if an undeveloped site is already fenced in.
Mr. Curl said that's covered.
Mr. Bosi said that would be up to the discretion of the County Manager or designee. Some or all of these landscape requirements may be displaced if it would better screen the tower if located within the parcel.

A discussion ensued and the following points were made:

- That addresses most of Verizon's issues.
- If it's on a piece of property that's already fenced in, you could eliminate the need for landscaping.
- Attorney Johnston said it would be good to have that as part of a conditional use request to reduce separation. You can get a conditional use to reduce separation, if you want to go higher than the height, etc., so this would add to that or if we wanted to request eliminating some landscaping for those reasons.
- Mr. Bosi noted that a footnote on page 36 involving Table 3 was added unintentionally.
- On p. 38, 3.c says, "Facilities shall be set back from the closest outer edge of a roof a distance of not less than 10% of the rooftop length and width, but not less than 5 feet." Attorney Johnston said that should refer to rooftop-mounted facilities because you could still have a parapet mounted at the top of the building, as long as there's a screen that's provided for in that section. They wouldn't be setback to the anterior of the roof.
- Attorney Johnston said he believed p. 38 Section 3.c's intent was that under these provisions, you have the ability to go on the rooftop setback as provided and to add "roof-top mounted facilities," as outlined in the standards applicable to all rooftop or building mounted facilities.
- Mr. Bosi said that would clear it up.
- Attorney Johnston thanked staff for its hard work, calling it a good process.

[Ms. Fewell passed out an email from Katie O. Berkley, AICP, of Becker & Polakoff, Fort Myers, which represented the SBA comments, with suggested language and deletions received this morning.]

A discussion ensued over the suggested language, text changes and comments in the margins.

Mr. Bosi said the county had discussions and would not be entertaining those suggestions. We are not entertaining a suggestion to change C-4 to CU (conditional use). C-4 has been a permitted use for telecommunication towers for as long as he's been here. It's the second highest intense commercial zoning district. Their concern is if it's adjacent to residential property. There are increased setback heights in those cases, so we respectfully declined.

Acting Chairman Foley asked about the reference to the Spectrum Act of 2012.
Mr. Bosi said that upon the advice of the County Attorney's Office, we're not reiterating federal law. If it's a federal regulation, it's applicable. It doesn't have to be within our code.

A discussion ensued and Mr. Johnson said they had nothing further to add.

Mr. Bosi said one of the other changes they suggested was not to require emergency backup generators. We find that during hurricanes, emergency backup generators are the only thing that allows for those facilities to maintain their functionality.

A discussion ensued over that suggestion and the subcommittee agreed they are essential.

Mr. Bosi responded that:

- Many years ago, when telephone and electric poles were being added to front yards, residents didn't get to say where that pole was going or not.
- 90% of emergency service calls come from wireless communication devices and cell phones, so they're essential to the health, safety and welfare of your community.

- We're trying to provide more regulatory flexibility. The provision of requiring emergency backup generators is a prudent and wise regulation so that during disasters, people have the ability to communicate through texts or calls.
- The 1996 Federal Communication Act allows the private side to build out the networks, such as Verizon. But that's a tough task because jurisdictions can be very restrictive in terms of how they allow it, so we're trying to find the right balance between community design and community preference, but the community needs to be able to communicate and respond.

Mr. Curl noted that in January, FPL had to cut power to the grid when they were fighting a fire in the Estates, so the cell tower went down. We absolutely need to have backup generators as part of these facilities.

Ms. Emblidge asked to highlight one of the recommendations they proposed. In several locations, they're proposing making the requirement for a variance if you wanted to modify one of the regulations. But we took it as wanting to allow those setback changes, etc., through the CU process. We're trying to make this more user-friendly. Our thought was that there be no variance, except for situations where you don't have a conditional use and then you have to use the variance process.

Mr. Bosi responded that:

- In Golden Gate Estates, there are examples where every conditional use for a tower needs to have a variance for separation requirements because current requirements say 2½ times away from an Estate-zoned lot there the lot.
- You can't find a lot big enough to where you can have separation so everyone has to have a variance and it's hard. It's based upon the land and can't be satisfied by the current configurations of the 2¼ lots, so that's why we thought we'd wrap it into one conditional-use process.
- You can add additional conditions to help mitigate whatever that separation requirement is imposing to provide for better compatibility.

Mr. Johnson said we're continuing to work with our County Attorney's Office and hope to keep moving this forward to the full DSAC in November. There may be additional comments from the County Attorney's Office in which language or the text will be changed, so he wanted the subcommittee to be aware of that.

Acting Chairman Foley said we will accept the e-mail presented to us today but won't take action on it because we don't have enough time to review it in a sufficient manner and offer comment during this meeting.
Mr. Johnson said when it goes to the full DSAC, we will include that in your packet.

Mr. McLean made a motion to approve PL20230013966 as submitted, with the changes as recommended by subcommittee members: Modify LDC Section 5.05.09, F.2.g.iii., to include a 3-foot-high continuous hedge requirement, in addition to the existing landscaping and screening requirements (page 37), with the exception of access gates; remove Footnote 2 from "50% of tower height" in Table 3 because it was a Scrivener's error (page 36); and modify the wording of LDC Section 5.05.09, F.3.c., to begin the sentence with "Rooftop mounted" to clarify the intent of the regulations (page 38). Second by Mr. Curl. The motion passed unanimously, 3-0.

6. Public Comments
(See 4.c above)

Upcoming DSAC-LDR Subcommittee Meeting Date:
a. Discuss alternative dates for meeting scheduled for December 19, 2023

A discussion ensued over Nov. 21 and Dec. 5, but the subcommittee agreed not to change the December 19 meeting date.

7. **Adjourn**
Mr. McLean made a motion to adjourn the meeting. Second by Mr. Curl. The motion passed unanimously, 3-0.

There being no further business for the good of the County, the meeting was adjourned by the order of the acting chairman at 4:41 p.m.

COLLIER COUNTY DEVELOPMENT SERVICES ADVISORY COMMITTEE LAND-DEVELOPMENT REVIEW SUBCOMMITTEE

Blair A Foley Digitally signed by Blair A Foley Date: 2023.12.11 09:19:08 -05'00'

Blair Foley, Acting Chairman

These minutes ✓ were approved by the subcommittee/acting chairman on 12/11/2023, (check one) as presented _____, or as amended _____.