

**MINUTES OF THE MEETING OF THE COLLIER COUNTY  
DEVELOPMENT SERVICES ADVISORY COMMITTEE**

Naples, Florida, June 2, 2010

LET IT BE REMEMBERED that the Collier County Development Services Advisory Committee, having conducted business herein, met on this date at 3:00 PM in REGULAR SESSION in Conference Room #610, Collier County Growth Management Division/Planning & Regulation, 2800 N. Horseshoe Drive, Naples, Florida, with the following Members present:

CHAIRMAN: William Varian  
Vice Chair: David Dunnavant  
Ray Allain  
James Boughton  
Clay Brooker (Excused)  
Laura Spurgeon DeJohn  
Dalas Disney  
Marco Espinar  
Blair Foley  
Regan Henry  
George Hermanson  
David Hurst  
Reed Jarvi  
Robert Mulhere  
Mario Valle

ALSO PRESENT: Judy Puig, Operations Analyst – Staff Liaison  
Phil Gramatges, Interim Director, Public Utilities  
Jamie French, Director, Operations  
Bill Lorenz, Director, Land Development Services  
Susan Istenes, AICP, Manager, Special Projects  
Diane Flagg, Director, Code Enforcement  
Gary Harrison, Building Official  
Robert Wiley, Principal Project Mgr., Watershed Study Project/FEMA

- I. **Call to Order:**  
**Chairman William Varian** called the meeting to order at 3:04 PM and read the procedures to be followed during the meeting.
- II. **Approval of Agenda:**  
*Marco Espinar moved to approve the Agenda as submitted. Second by Robert Mulhere. Carried unanimously, 12-0.*
- III. **Approval of Minutes – May 5, 2010 Meeting:**  
*Dalas Disney moved to approve the Minutes of the May 5, 2010 meeting as submitted. Second by Reed Jarvi. Carried unanimously, 12-0.*

*(Laura Spurgeon DeJohn arrived at 3:07 PM.)*

- IV. **Public Speakers:**  
*(None)*
- V. **Growth Management Division Staff Announcements/Updates:**
- A. **Public Utilities Division Update – Phil Gramatges, Interim Director**
- A number of projects have been delayed over the past two years
    - \$29M will be requested for New Projects in the Capital Budget for Fiscal Year 2011
    - Carryover from F/Y 2010 is anticipated (\$60 - \$70M)
  - There is a staff shortage in Planning & Project Management – initially two Principal Project Managers and two Senior Project Managers were needed
    - One Senior Project Manager and one Principal Project Manager have been hired
  - Recruiting for the position of Director – Mr. Gramatges is retiring (July 15)
- B. **Fire Review Update – Ed Riley, Fire Code Official**
- Monthly Report was submitted – Committee's information packet
  - Percentage of First Reviews Approved – 35%
- Chairman Varian** stated the percentage appeared to be very low.
- C. **Transportation Planning Section Update – Michael Greene, Transportation Planning Manager**
- No report
- D. **Planning and Regulation Update – Nick Casalanguida, Deputy Administrator**
- No report
- VI. **Old Business:**  
*(None)*

**VII. New Business:**

**B. Growth Management Fee Schedule Updates – Bill Lorenz, Director - Land Development Services and Diane Flagg, Director – Code Enforcement**

(A copy of the Memorandum dated May 26, 2010 was distributed to the Committee.)

- Proposed changes: Inspection Fees and Code Enforcement Fees
- Current policy: 100% of Inspection Fees are collected at application
  - Proposed change: collect 50% at application and balance at the Pre-Construction Meeting
- Fees are non-refundable

*(George Hermanson arrived at 3:13 PM)*

- The Fee Schedule will be reviewed on a quarterly basis to determine if changes should be made
- The Fee Schedule Resolution will be presented to the Board of County Commissioners on June 22, 2010

Questions:

- (1) “Why collect Inspection Fees before the project comes to fruition?”
  - Inspectors must be on staff (trained) before projects begin and fees help to maintain staff
- (2) “Why not collect balance at another point in the process?”
- (3) “Why not collect 50% at Pre-Construction Meeting and balance at turnover or at acceptance of preliminary utilities?”
- (4) “Have you considered collecting a smaller percentage? Why 50%?”
- (5) “What was the origin of the 2.25% -- why was that figure chosen?”

Concern was expressed if the fees are paid and the project stalls, there is no opportunity for a refund.

Suggestion: The policy should be re-examined to provide some recourse for a refund.

It was noted fees are currently refundable on a case-by-case basis.

**Mr. Lorenz** stated a request can be made for a refund and it is presented to the Board of County Commissioners for approval. He further stated if a project changes, the probable estimated costs will be revised.

**Diane Flagg** presented revisions to “**EE) Failure to Obtain a Permit**”

**Background:** The Board of County Commissioners is seeking compliance with Code Enforcement regulations rather than strict assessment of fines. When a violation is abated, fines have been waived after the hard costs (i.e., operational or abatement costs incurred by the County) are paid. The Waiver Request is presented to the BCC on behalf of the individual and the BCC determines whether or not to approve it.

**Revisions:**

- In Section 1, when work is started without obtaining a permit, the fee is 2x the regular fee which is consistent with the Building Code.

- In Sections 2, 3, and 4, if the property owner obtains compliance, the fee will be assessed at the regular rate. However, a contractor will be charged 2x the regular fee since the contractor should have knowledge of the regulations.
- In Section 5, the date was changed from April 30, 1997 to **April 1, 1997**.
- Section 5 is based upon an existing Ordinance that was largely ignored in the past. If a property owner can provide a “preponderance of evidence” that the structure in question was built prior to April 1, 1997 and in compliance with the Codes existing at that time, then a permit will be issued without a fee.

There was a discussion concerning the County’s responsibility regarding record keeping. It was noted Record Department moved several times and there was a flood that contributed to the County’s inability to locate documentation prior to April 1, 1997.

- A series of flow charts have been drafted to assist Staff to determine an Affirmative Defense may be applied to the case. Other processes include Permit by Affidavit and After-the-Fact Permit.
- Code Enforcement Investigators are required to walk property owners through the process and assist them with research to obtain a resolution.

**Gary Harrison, Building Official**, explained the process, i.e., an Inspector will be sent to the property and the homeowner will remove whatever is necessary (dry wall or receptacles, etc.) to determine the age of construction.

**Jamie French** stated the goal was to obtain consistency in the language based on directions from the BCC and management. Currently a homeowner will pay 4 times the fee to obtain an After-the-Fact Permit while a contractor will be only 2 times the fee. If a homeowner is voluntarily complying, they would not be charged a fee. Further revisions may be necessary to specify that the homeowner must make the property easily accessible. He noted Florida Building Codes will be observed.

There was an objection to the term “preponderance” as a qualifier and it was suggested to strike the word.

**Mr. French** stated the language was taken directly from the Ordinance.

[**Definition:** Preponderance of the Evidence: A standard of proof that must be met by a Plaintiff if he/she is to win a civil action.

- *The greater weight of the evidence required in a civil (non-criminal) lawsuit for the Trier of Fact (jury or Judge without a jury) to decide in favor of one side or the other. This preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.*

Preponderance of the evidence is required in a civil case while “beyond a reasonable doubt” is the more severe test of evidence required to convict in a criminal trial.]

**Jamie French** answered the questions posed earlier:

- Regarding the 2.25 percentage, he will order a Fee Study to see if this is the correct number and return with the results.
- Regarding the 50% Fee Split, the split was proposed to assist the developer who would benefit from having less cash to produce at the beginning of the project. The 50% that is retained enables the County to retain licensed professionals on staff.
- Regarding the non-refundable payments, the County Attorney's Office has concurred it is implied all fees within the Fee Schedule are non-refundable.
- Contractors have the right to appeal to the Board of County Commissioners for a refund and the Board can grant refunds on a case-by-case basis.

He stated if a fee is collected in error, a refund will be provided. If the scope of the project changes, the fees can be adjusted. Staff does not have the ability to make any changes to the Fee Schedule or to authorize a refund without BCC approval.

*Robert Mulhere moved to recommend approving the changes to the Fee Schedule while requesting Staff clarify the process by which a refund, in general, might be obtained. Second by Mario Valle.*

*A suggestion was made to amend the Motion to add inserting the phrase "unless otherwise granted by the Board of County Commissioners" at the end of each paragraph under "EE – Failure to Obtain a Permit."*

*Robert Mulhere amended the Motion to include the suggested language. Second by Mario Valle. Carried unanimously, 14-0.*

**A. Presentation: Administrative Code – Susan Istenes, AICP, Manager - Special Projects**

(Copies of the Table of Contents/Introductory Chapter and the Conditional Uses Procedures were distributed to the Members.)

**Ms. Istenes** stated a draft of the Administrative Code has been completed and is in review. She explained the "Administrative Code" is, in essence, an Administrative Procedures Manual.

- Currently, all administrative procedures are part of the Land Development Code along with Development Regulations.
- The majority of the procedures and processes are located in Chapter 10 of the LDC and the language from the Chapter has been inserted into the Administrative Code, re-organized and reformatted.
- The consultant reviewed the LDC and made suggestions regarding moving items within the LDC (for better organization) and moving portions of the LDC into the Code of Laws and Ordinances. For example, the Conditional Uses Procedures has been moved to the Administrative Code.
- The approval process will include amending the LDC, the Administrative Code and the Code of Laws and Ordinances.

- The full document, including revisions, will be provided to DSAC and other Advisory Committees prior to presenting to the Board of County Commissioners for approval.

Errors/Typos noted:

- The abbreviation for Development Services Advisory Committee is DSAC, not DRAC
- Historic/Archaeological Preservation Board is the correct name for the Committee, not “Historical”

A suggestion was made to cross-reference the criteria and factual data used to make decisions regarding a Conditional Use in the LDC.

**Ms. Istenes** suggested dividing the adoption process into phases: the first phase was drafting the Administrative Code. The second phase will be to review of the contents, processes and procedures.

Consensus: To go forward with the work and the suggested adoption process.

#### **VIII. Committee Member Comments:**

##### **(1) David Hurst**

###### **Topic: Flood Damage Prevention Ordinance**

- Questioned who may become a member of the Floodplain Management Planning Committee

**Robert Wiley** stated membership consists of citizens (50%), Staff (50%) in addition to a position for one representative from the City of Marco Island, the City of Naples and Everglades City, if the municipalities chose to participate. There is currently one vacancy. The meetings are noticed and open to the public.

**Chairman Varian** noted the Ordinance prohibits anyone from the Industry from applying for membership.

**Mr. Wiley** stated the next meeting for the Floodplain Management Planning Committee is July 12<sup>th</sup>.

**Mr. Hurst** stated there are consultants who would like to voice their concerns and suggested scheduling a meeting with Mr. Wiley. It was noted only Mr. Hurst could attend as a representative of DSAC in order to avoid a conflict with the Sunshine Laws.

**Mr. Wiley** asked the Committee members to send their comments regarding the draft of the Ordinance distributed at the last DSAC meeting. He noted FEMA considers the entire County as a “Coastal Community” within the flood insurance program.

*(4:40 PM – George Hermanson left)*

**Chairman Varian** reminded the members to send their comments to Judy who will forward them to Mr. Wiley.

- ##### **(2) David Hurst**
- requested an Update to the Road Impact Fees and asked to add that topic to the next Agenda and for Amy Patterson to appear and explain.

**Next Meeting Dates:**

**July 7, 2010 – 3:00 PM**

**August 4, 2010 – 3:00 PM**

**September 1, 2010 – 3:00 PM**

**There being no further business for the good of the County, the meeting was adjourned by order of the Chairman at 4:50 PM.**

**DEVELOPMENT SERVICES  
ADVISORY COMMITTEE**



**William Varian, Chairman**

The Minutes were approved by the Board/Committee on \_\_\_\_\_  
as presented , or as amended \_\_\_\_\_.

Joy 2/12