

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

Naples, Florida, May 5, 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 /Planning & Regulation Division, 2800 N. Horseshoe Drive, Naples, Florida, with the following Members present:

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

ALSO PRESENT: Nick Casalanguida, Deputy Administrator, Growth Management Division
Judy Puig, Operations Analyst – Staff Liaison
Phil Gramatges, Interim Director, Public Utilities
Stan Chrzanowski, Senior Engineer, Engineering Review Manager
Stephen Lenberger, Senior Environmental Specialist
James French, Director, Operations
Robert Wiley, Principal Project Mgr., Watershed Study Project/FEMA
Michael Greene, Transportation Planning Manager
Nathan Beals, Project Manager, Public Utilities

I. Call to Order:

Chairman William Varian called the meeting to order at 3:02 PM and read the procedures to be followed during the meeting.

II. Approval of Agenda:

Change:

- Item VII – “B” under “New Business” entitled *LDC Amendment: Manatee Protection Plan/Shoreline Calculations* will be heard following Item V, “Staff Announcements/ Updates.”

Mario Valle moved to approve the Agenda as submitted. Second by Robert Mulhere. Carried unanimously, 11-0.

(Laura Spurgeon DeJohn arrived at 3:06 PM.)

III. Approval of Minutes – April 7, 2010 Meeting:

Changes:

- On Page 8, under Item “G,” the last two sentences of the first paragraph were amended as follows:
“The Planning Commission did not approve the compromise language and requested new criteria, also not found in the *Manatee Protection Plan*, to determine whether or not a shoreline should be counted. He requested that other Committees conduct additional hearings to consider the new criteria.”
- The second paragraph on Page 8, under “G,” was amended as follows:
“Assistant County Attorney Heidi Ashton explained that the Planning Committee directed the County Attorney’s office”
- On Page 9, first paragraph, the last line was amended as follows:
“... be presented to DSAC prior to any public hearing before the Board of County Commissioners or the Collier County Planning Commission (“CCPC”) is scheduled.”

Robert Mulhere moved to approve the Minutes of the April 7, 2010 meeting as amended. Second by George Hermanson. Carried unanimously, 12-0.

IV. Public Speakers:

(Will be heard when Item is presented)

V. Staff Announcements/Updates:

A. Public Utilities Division Update – Phil Gramatges, Interim Director

- No new items to report
- No questions from the Committee

B. Fire Review Update – Ed Riley, Fire Code Official

- The Monthly Report was submitted in the Committee’s information packet

Chairman Varian noted under the category, “*Percentage of First Reviews Approved,*” the percentage for Fire Alarm Reviews was 36%. He expressed concern, stating the percentage appeared to be low.

C. Transportation Division Update – Michael Greene, Transportation Planning Manager

- No new items to report
- I-75/Immokalee – lanes are open

D. CDES Update – Nick Casalanguida, Interim Administrator

- The Board of County Commissioners approved the merger of Transportation with Community Development and Environmental Services. The name of the new Division is the Growth Management Division.
 - **Norman Feder**, Administrator of the Transportation Department, was named as Administrator for the Growth Management Division.
 - **Nick Casalanguida** was named as Deputy Administrator.

There was a discussion concerning the new division, shared resources, job sharing, the team approach, and responsibilities.

Bob Mulhere noted there were references in the Land Development Code concerning the appeals process, and asked who is identified as the contact. **Nick Casalanguida** stated the correct reference is “the County Manager or Designee” and the reference has been corrected in updates to the LDC.

- **Mr. Casalanguida** met with Kim Grant regarding new teams to be formed to work on various projects. He asked for volunteers from DSAC to work with Staff on the Right-of-Way issue and on the spot-boundary survey/easement issue. He cited an example of a pool at a home in Marbella Lakes that was incorrectly sited and, when constructed, extended over the property line. **Reed Jarvi** had previously expressed interest in the R-O-W team. **George Hermanson** volunteered for the survey/boundary team.
- **Bob Dunn** is retiring as Director of Building Review & Permitting. Gary Harrison will serve in the interim until a decision is made regarding a replacement (August – September), as well as the status of the position, i.e., whether a Director or a Manager is needed.
- **Stan Chrzanowski** is also retiring. A search will be conducted first to find a replacement for the position of Senior Engineer/Engineering Review Manager.

VII. New Business:

B. LDC Amendment: Manatee Protection Plan/Shoreline Calculations – Stephen Lenberger, Senior Environmental Specialist

LDC Section: 5.05.02

Change: To clarify how the County will treat the length of shoreline within conservation easements when calculating the amount of wet slips according to the Manatee Protection Plan.

A copy of the revised Amendment was distributed to the Committee.

Chairman Varian noted there were multiple Public Speakers for this topic. He asked Steve Lenberger to present first and then hear the Public Speakers' comments.

Mr. Lengerger reviewed the transcript of the minutes of the Board of County Commissioners' meeting with the County Attorney's Office to clarify the Board's direction to Staff regarding the content of the Amendment.

"... to exclude shoreline within County required preserves and State and Federal conservation easements which do not allow wet slips within the conservation easements when used to calculate the number of wet slips."

He stated the Board wanted applicants to have the ability, through the Conditional Use process, to request to use the shoreline within a preserve area in calculating wet slips if public access was provided. He further stated the Board also addressed the issue of "vesting."

Mr. Lenberger noted the EAC reviewed the revised Amendment and recommended making three changes to Paragraph "G:"

- Strike the words "50 percent or more of" following the word "projects" in the second sentence,
- In the last sentence, substitute the word "Subsection" for the word Ordinance," and
- Add a sentence between the second and the last sentences:
"This Ordinance is not intended to allow publically-owned wet slips within natural resource protection areas when the County owns the property."

The EAC requested the County Attorney's Office define the meaning of "existing" and "vested right."

Bob Mulhere noted two issues:

1. An existing condition on a property -- where an existing restrictive covenant or conservation easement does not allow wet slips to be calculated or placed within that easement. It is excluded and understandable because there is a prohibition on the property.
2. The other condition is when someone is going through the development process and, if there is no restriction or conservation easement on the property, the entire frontage can be used to calculate wet slips but, as part of that process, there is a request or a requirement to create a conservation easement that will restrict the physical placement of wet slips within that area.

He stated it would not be inconsistent with the Board's direction to still allow the calculation of the entire lineal frontage to place the wet slips somewhere outside of the conservation easement. He supported removing the 50% cap and stated it should be determined during the public hearing.

Clay Brooker stated the way the Amendment is drafted, if a property has shoreline within a County preserve -- not necessarily in a conservation easement -- the shoreline is excluded. He asked if the word "preserve" was mentioned anywhere in the Manatee Protection Plan.

Mr. Lenberger stated the Code requires preserves to be placed in a conservation easement.

Mr. Brooker stated the language was over-inclusive and confusing. He stated the same language was used in the Executive Summary presented to the BCC in April 2008, and it was confusing then.

Assistant County Attorney Wright stated substituting "conservation easement" in place of "preserve" constitutes a clarification, not a substantive change.

Mr. Brooker also questioned the Conditional Use process. He stated an owner could apply for a Conditional Use to obtain more slips than were permitted by the calculation once the exclusion is applied.

Steve Lenberger stated an owner would calculate the maximum number of wet slips, excluding what is in the conservation area. If more were needed and were open to the public, additional wet slips could be requested if you counted the shoreline within the conservation easement.

George Hermanson asked if the intention of the EAC, by removing the 50% cap, was to make all the wet slips available to the public or a minimum number.

Mr. Lenberger stated it would be determined during the Conditional Use process -- to be negotiated with the Board.

Reed Jarvi gave an example: If there were 1,000 feet of shoreline and 500 feet was in a conservation easement, only 500 feet can be used to calculate wet slips.

Clay Brooker asked if a conservation easement allowed wet slips or was silent on the issue, would a more restrictive approach be taken?

Mr. Wright stated a conservative approach will be taken by his office -- the current interpretation is to not allow the shoreline.

Mr. Jarvi stated, using his previous example, if he wished to use the 500 feet in the conservation easement, or any portion of it, he must allow some public access to the additional wet slips which would be determined at a later date.

Public Speakers:

Kathleen Robbins, representing the Vanderbilt Beach Residents Association, stated the language in the revised Amendment was supported by the Association, and she understood many conservation easements permitted certain uses which were outlined in the easement. She stated if wet slips are not mentioned in an easement, they should not be allowed. The purpose of a conservation easement is to "conserve" the land in the easement.

George Hermanson noted a conservation easement on a shoreline does not always prohibit the use of boats.

Richard Yovanovich, Esq., on behalf of Signature Communities, referred to the Dunes Project and stated the Project went through a re-zoning process in 1998, and there were discussions about boat docks when the original PUD was adopted. He stated it was understood the developer would return to the BCC in the future to discuss the actual number of boat docks because at the time of an application for re-zoning, the number and appearance of the boat docks was unknown. He further stated a PUD Master Plan is required to identify a preserve area within the development but he is not aware of a PUD Master Plan that allows boat docks in a preserve area.

Mr. Yovanovich continued his narrative of the history of the Project.: In 2000, the Project requested to add one hundred acres to the property which included one mile of shoreline. The former Planning Director stated The Dunes would be allowed to build 10 boat slips per 100 linear feet of shoreline. It was noted a portion of the property would be placed in a conservation easement. The developer stated during the PUD process he would ask for a total of 60 boat slips for the Project. He reiterated neither the Board of County Commissioners nor anyone on Staff advised the developer that the language of the conservation easement was to be drafted to allow frontage to be used when calculating the number of boat slips.

He asserted the Manatee Protection Plan permits the calculation of the maximum number of boat slips that could be allowed, but not the number that a developer could request or receive. (Example: the maximum number allowed may be 100 slips, but the developer would request to build only 50.) He stated the concept is the same as a residential PUD. The PUD identifies a preserve area which is counted to calculate density, but nothing will be built in the preserve. The dwelling units will be placed elsewhere on the property.

Mr. Yovanovich contended the language in the Amendment will remove the Riparian right of an owner to access the water, without compensation, and will result in lawsuits. He stated the Project received State permits for 49 docks, but the developer may lose an additional 29 if the Amendment is approved. He stated the previously approved language, "*unless there is an expressed prohibition,*" is correct and should remain.

He referenced Clam Bay which is a Natural Resource Protection Area. The residents of Pelican Bay are concerned that the County could build public boat slips/docks facility in the area resulting in massive amounts of docks for lease to the public.

Tim Hall, Turrell, Hall & Associates, stated his concern is for existing properties that have conservation easements and will be affected. He suggested clarifying the language to add the Amendment will apply only to County conservation easements and not to State/Federal conservation easements where the shoreline is counted unless an easement specifically prohibits it. The language should be consistent with the State and Federal regulations and not permit a double standard to occur. He also suggested clarifying the language because there are no conservation easements that allow wet slips to be built within the conservation boundary – i.e., utilizing the following language: "*within the conservation easement documents.*"

Lew Schmidt, resident of Vanderbilt Beach area, stated he was concerned about preserving the environment. He stated the low lying portion of a residential development is placed in a conservation easement primarily because it is not buildable land. The result is a higher density in the upland section. He contended taking the allowance (one dock per 100 linear feet) and moving it over to an area where the water is deep enough for boats to dock is not a problem. The concern is that so many docks will be built that the manatees will not be able to swim between the boats to get to their habitat because the docks will be too “jammed up.” He stated if boat docks are permitted across the entire frontage, the area will be destroyed and will never recover.

Chairman Varian read a portion of an email from Marco Espinar concerning vested rights. He would support it if the majority of members did.

Bob Mulhere stated statements have been made that the use of linear footage within a conservation area to calculate the number of allowed boat slips is prohibited and questioned whether that was, in fact, the existing policy. The policy was previously interpreted to permit such calculations. He pointed out the County has allowed marina facilities to be built with a number of slips that have been calculated based on the entire linear frontage, including the portion within a conservation easement.

Clay Brooker stated Staff claims the BCC’s direction in April 2008 was apparently misinterpreted. The issue is whether or not the County, over the years, has consistently applied the Manatee Protection Plan to exclude a shoreline that has a conservation easement on it.

He stated the only project where the exclusion was applied was “Fishermen’s Village.” (The language of the easement for “Fishermen’s Village did allow docks.) He read the transcript of the April 2008 meeting, and stated he did not understand exactly what the BCC directed. *“Each Commissioner asked, at least twice, what exactly are we doing here by this motion?”* He noted Joe Schmitt, CDES Administrator at the time, stated he would consult with Industry representatives to “craft” language that would work for everyone. Workshops were held over the past two years and the result was the language that was approved by DSAC and the EAC.

Bob Mulhere stated in the worst case scenario, everyone would agree it is unclear whether the existing language was intended to allow the inclusion of the linear shoreline in a conservation easement or not. It is not specific – one way or the other.

Clay Brooker stated the Manatee Protection Plan refers to “shoreline” and only shoreline. “Someone” decided to insert additional words – the Plan does not reference shoreline encumbered by an easement.

Bob Mulhere noted there is an effort to clarify but in the process of “clarifying,” the result was to exclude. Unless there is clarification, there will be resistance to placing any shoreline into a conservation easement in the future. If an appropriate number of slips are allowed to be calculated, based on the entire frontage, there will be no objections to providing a conservation easement. The language will further reduce the likelihood of access to the water for the public.

Clay Brooker said the fight is over the number of permitted wet slips and being driven by one project. He stated he does not think it is wise to change the Code to rectify one project.

George Hermanson stated if a property owner has water, he will want to build a dock. He was concerned about the requirement to offer public access. Boat slips are usually offered as an amenity to the residents of a development. Developers will no longer be able to do that because they will be forced to offer the same boat slips to the public.

(David Dunnivant arrived at 4:05 PM.)

Additional questions and comments:

- Has the County Attorney's office conducted a Burt-Harris analysis if the language is adopted?
- One member stated he thought the Amendment was nothing more than a land grab.

Dalas Disney stated water sports, fishing, and boating are a huge part of the lifestyle in Florida. He further stated the LDC revision was a push to reduce/eliminate boat traffic and to further reduce land rights without compensation to land owners. He did not support the Amendment.

Public Speaker:

Frank Perrucci stated he thought the issue had been decided two years ago. He further stated the Marine Industries supports more access for the community.

Reed Jarvi moved to amend the language in Paragraph G:

- *The first sentence will remain the same.*
- *The second sentence will be changed as follows:*
“Shoreline within County, State and Federal conservation easements which do not allow wetslips within their conservation easements shall not be used in calculating the maximum allowable number of wet slips pursuant to the Manatee Protection Plan.
- *Remove the remainder of the sentence starting at the word “except.”*
- *The last sentence will read: “Any existing or vested right with respect to wet slips shall be exempted from this Subsection.”*

Second by Robert Mulhere for discussion.

Bob Mulhere suggested removing “do not allow wet slips” and substituting “which expressly prohibit wet slips.”

Clay Brooker stated the previously approved language stated: *Shoreline cannot be utilized for calculation of wetslips if it is encumbered by a conservation easement which expressly and specifically excludes wetslips.* If an easement is silent or expressly allows wet slips, you can use the shoreline in the calculation.

Laura DeJohn pointed out the purpose was to not allow calculation using the shoreline – counting of shoreline toward the number of wetslips – which is different from easements which do not allow wetslips to physically occupy the easement.

Reed Jarvi stated the intention of his motion was to make the County easements the same as the State and Federal easements.

Clay Brooker confirmed Laura was correct and clarified the previous approved language: *All shoreline will be used, except for shoreline within conservation easements where the conservation easement expressly and specifically excludes the use of the easement shoreline, to calculate the amount of wetlands.*

Dalas Disney stated the language allowed additional boat slips to be requested through a Conditional Use but the likelihood of obtaining approval of the Conditional Use was slim.

There was further discussion concerning potential problems such as what if the development was gated – how would the public gain access? How many public would be allowed? It was pointed out that County-owned public docks would also be affected by the Amendment.

The Motion was defeated – all members were opposed.

Clay Brooker moved to recommend approval of the previous language supported by DSAC as follows:

- *The definition of shoreline for the purpose of the Manatee Protection Plan shall be the interface of land and water at mean high water, as established using standard survey techniques.*
- *All of the shoreline will be used for calculating the maximum allowable number of wetlands pursuant to the Manatee Protection Plan, except for shoreline within conservation easements where the conservation easement expressly and specifically excludes the use of the easement shoreline to calculate the amount of wetlands.*
- *Subsection G shall apply only to conservation easements granted as of the date of approval of the Ordinance.*

Second by George Hermanson.

Clay Brooker suggested sending an explanation (commentary) to the Board that at the end of the April, 2008 meeting, the representation by Joe Schmitt was the issue would be presented to the community and the Industry to work out language. The language was presented to the EAC and was approved by their vote of 4 to 1 in the first instance and was approved for a second time by the EAC.

At the end of the 2008 meeting, people were confused and did not grasp all of the issues, nuances, and consequences.

George Hermanson suggested the record should reflect DSAC supports the use of conservation easement to prohibit unsuitable uses in those areas but recognizes an easement should not further restrict an individual's right to calculate the number of docks that will reasonably fit. If extensive conservation easements are placed on shorelines, the easements will physically restrict the number of docks by virtue of the amount of available shoreline.

Assistant County Attorney Wright pointed out the last sentence of the motion could leave a question with respect to existing easements.

Clay Brooker amended the motion to remove the last sentence. Second by George Hermanson. Motion carried 12-“Yes”/1-“No.” Dalas Disney was opposed.

VI. Old Business:

A. Final PUD Application Fee Changes – Jamie French

- Staff has recommended to lower the PUD close-out fee to \$2,500.
- Multiple developments within a PUD will be covered by the single figure.
- Will be presented to the BCC in July

Robert Mulhere moved to recommend approving the reduction of close-out fees and to forward the recommendation to the Board of County Commissioners. Second by Reed Jarvi. Carried unanimously, 13 – 0.

(Ray Allain left at 4:45 PM.)

Performance Standard Measures – Jamie French

- Staff made a determination regarding the number of plans to be submitted:
 - Single family: three sets of plans – two of which must be signed and sealed
 - Commercial: five sets of plans

Dalas Disney moved to recommend approving the Performance Standards and to forward the recommendation to the Board of County Commissioners. Second by Mario Valle. Carried unanimously, 12 – 0.

B. Update on Main Water Breaks – Nathan Beals and Joe Thomas, Public Utilities

- Investigation revealed there were not as many water main breaks as had been thought

VII. New Business:

A. Right-of-Way and Site Plan Review – Stan Chrzanowski, Engineering Review Manager

Mr. Chrzanowski stated a Workshop will be scheduled in the near future and the Committee will be notified.

C. Flood Damage Prevention Ordinance – Robert Wiley

A copy of the draft of the Flood Damage Prevention Ordinance, prepared by the County Attorney’s Office, was distributed to the Committee.

Mr. Wiley stated the Ordinance has been presented to the Floodplain Management Planning Committee. He requested the Committee Members review the document and email their comments to him within the next 30 days. He will compile the comments along with suggestions to resolve perceived issues and will present the information to the Floodplain Committee in July and to DSAC in August. He will also email the State’s Model Ordinance to the Staff Liaison (Judy Puig) who will forward it to the Committee Members.

Mr. Wiley pointed out the yellow highlighted portions of the Ordinance reflected changes suggested by other Committee members. The purpose of the document is to bring the local Ordinance current with FEMA's methods of operations, especially in terms referenced in the Ordinance. The goal is to present a final document to the Board of County Commissioners in October.

Chairman Varian asked the members to review a draft of a letter to be sent to the Board of County Commissioner and the County Manager.

Robert Mulhere moved to recommend approving the letter for signature by the DSAC Chairman and to forward the letter to the Board of County Commissioners. Second by George Hermanson. Carried unanimously, 12 – 0.

(Robert Mulhere left at 5:00 PM.)

Paul Mattausch, Director of the Collier County Water Department, stated there was apparently some confusion following his presentation to DSAC at its last meeting. He stated for the record:

- The Special Act of the Legislature establishing the Collier County Water/Sewer District established that the District will provide no free service.
- Collier County Ordinance 2001-73, as amended, also established that the District will provide no free service.
- There are no exempted uses from either the Special Act of the State Legislature or the Collier County Ordinance.
- The only way to equitably and impartially to measure and bill for water usage is through the use of a water meter.
- Collier County Cross-Connection Control Ordinance 1997-33, as amended, establishes that all service connections will be protected by a back-flow preventer. (Equipment specified: reduced pressure principle back-flow preventer)
- The Florida Administrative Code established that the public water supply system must maintain a minimum of 20 psi. ISO tested to establish insurance rates and confirmed the 20 psi minimum pressure under fire flow conditions.
- Collier County Utility Standards was established by Ordinance and set a minimum pressure at the main of 40 psi. The increased pressure recognizes and compensates for the pressure lost through a meter and a back-flow prevention device.

VIII. Committee Member Comments:

(None)

Next Meeting Dates:

June 2, 2010 – 3:00 PM

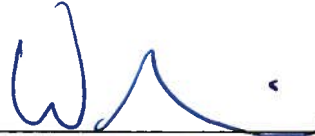
July 7, 2010 – 3:00 PM

August 4, 2010 – 3:00 PM

May 5, 2010

There being no further business for the good of the County, the meeting was adjourned by order of the Chairman at 5:02 PM.

**DEVELOPMENT SERVICES
ADVISORY COMMITTEE**



William Varian, Chairman

The Minutes were approved by the Board/Committee on 6/2/10,
as presented ✓, or as amended _____.