

MINUTES OF THE COLLIER COUNTY
DEVELOPMENT SERVICES ADVISORY COMMITTEE
MEETING

May 2, 2012

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 Office, 2800 North Horseshoe Drive, Naples, Florida, with the following Members present:

Chairman: William Varian
Vice Chair: David Dunnavant
Ray Allain
Clay Brooker
Laura Spurgeon De John
Dalas Disney
Marco Espinar
Blair Foley
Chris Mitchell
Robert Mulhere
Mario Valle
Ronald Waldrop

(Vacancy)

Excused: James Boughton
George Hermanson

ALSO PRESENT: Nick Casalanguida, Administrator – Growth Management Division
Jamie French, Director – Operations & Regulatory Management
Magaly Bowman, Operations Coordinator – Staff Liaison
Jay Ahmad, P.E., Director – Transportation Engineering
Reed Jarvi, Manager – Transportation Planning
Nathan Beals, Project Manager – Public Utilities
Caroline Cilek, M.S., Senior Planner – LDC Coordinator
Carolina Valera, Principal Planner – Comprehensive Planning

I. CALL TO ORDER:

Chairman Varian called the meeting to order at 3:00 PM and read the procedures to be observed during the meeting.

A quorum was established. Eleven members were present.

II. APPROVAL OF AGENDA:

Changes:

- Under Item VI-(D), “Staff Announcements” – Growth Management/Planning & Regulation will be heard first.
- Under Item VII-(A), “Old Business,” the LDC Amendment Update will be heard following the Growth Management update.

Mario Valle moved to approve the Agenda as amended. Second by Vice Chairman David Dunnivant. Carried unanimously, 11 – 0.

III. APPROVAL OF MINUTES – APRIL 4, 2012:

Dalas Disney moved to approve the Minutes of the April 4, 2012 Meeting as submitted. Second by Vice Chairman David Dunnivant. Carried unanimously, 8 – 0.

(Note: Ray Allain, Chris Mitchell, and Robert Mulhere could not vote because they did not attend the April 4th meeting.)

Comment:

Vice Chairman David Dunnivant clarified:

- There was an interesting discussion regarding the LDC modifications to Section 5.05.08 – Architectural and Site Design Standards.
- He was one of the participants talking to Carolina Valera and Caroline Cilek.
- There was a certain level of frustration which, upon further investigation after the meeting, showed the CBIA-proposed language for that Section which the Committee thought had been disregarded (and had expressed its dismay) was, in fact, very poor.
- The language drafted by Carolina Valera was significantly better or, at least, provided some relief from the current LDC issues.
- Unfortunately, the Minutes were accurate – they were all too correct – and he apologized for the Committee’s part in the discussion.
- He maintains there are Sections of the Code that need modification but what was presented to DSAC from the CBIA (“Collier Building Industry Association”) did not represent realistic changes that could have been implemented.
- Carolina Valera was quite right in ignoring them.

IV. DSAC VACANCY: REVIEW & VOTE, AND WELCOME TO CHRIS MITCHELL

Chairman Varian introduced Chris Mitchell to the Members.

Chris Mitchell stated he has been involved in development as a Consulting Engineer

for the past fifteen years. He is a Land Development Civil Engineer and has served as a member of the Utilities Discussion Board and the Fire Subcommittee.

Chairman Varian noted one application was submitted to fill the vacancy, but the individual did not have any construction-related experience. He asked Judy Puig, Staff Liaison, to determine the make-up of the Committee. He asked if there were specific areas the Members thought should be targeted when advertising for additional applicants.

(Note: A chart of the members including the categories they represent and the expiration dates of their terms was distributed to the members.)

Blair Foley noted that Stan Chrzanowski (formerly a Senior Engineer and Engineering Review Manager for Collier County) also submitted an application, but he may have missed the deadline.

Robert Mulhere moved to table a vote on the submitted application until ascertaining whether or not additional applications have been received. Second by Blair Foley. Carried unanimously, 11 – 0.

It was noted there are four Civil Engineers and three General Contractors as current members of DSAC.

Dalas Disney suggested adding a Trade Contractor, such as a Utilities Contractor.

Chairman Varian concurred, stating the Ordinance allows some flexibility in the make-up of the committee. He suggested advertising for A/C, Plumbing, or Roofing contractor candidates.

Blair Foley stated George Hermanson may not renew when his term expires.

Chairman Varian will ask Judy to contact Ian Mitchell to emphasize Trade Contractors when the ad runs again.

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

V. PUBLIC SPEAKERS:

(None)

VI. STAFF ANNOUNCEMENTS/UPDATES:

D. Planning & Regulation: Jamie French, Director – Operations & Regulatory Management and Nick Casalanguida, Administrator – Growth Management Division

Nick Casalanguida stated he may not have adequately explained the point of the first cycle of Amendment changes and provided the following background information:

- County Manager Leo Ochs met with representatives of the CBIA approximately twelve to eighteen months ago

- County's goals: To become more efficient, provide better customer service (more "user friendly"), reducing redundant and/or "bad" costs in development and construction
- Mr. Ochs asked CBIA to work with Staff who would "sponsor" a set of amendments with CBIA's input to ensure that CBIA did not incur any associated costs
- Revisions to the Administrative Code will be presented shortly after the Amendment Cycle concludes
- *Suggestion for Amendment Review*: "Stick to low-hanging fruit" – changes that can be accomplished without controversy when presented to the Planning Commission.

Nick Casalanguida clarified, stating the idea was to eliminate as many things that "we" agreed were "stupid" from the Land Development Code, but not to completely re-do the LDC.

He asserted Architectural Standards is a controversial item. Carolina Valera indicated an understanding had been reached with DSAC and a number of things that had been categorized as controversial during the last cycle had been "fixed." Some members advocated conducting a full architectural review which Ms. Valera supported to a certain extent. He maintained it could not be accomplished during the first cycle. He further stated presenting a full review of anything to the Planning Commission or the Board of County Commissioners would slow, if not halt, the Amendment Cycle.

He continued the goal was to revise the Administrative Code by pulling out anything that was redundant or didn't make sense.

Mr. Casalanguida noted two issues remain to be discussed, and Architectural Standards was one. He asked Dalas Disney if a resolution had been reached as a result of a meeting which took place with Carolina Valera after the April DSAC meeting.

Dalas Disney stated while not everything was resolved, some topics were "on the table" and under discussion. He noted the issue of Spandrel glass would be discussed during the DSAC meeting.

Mr. Casalanguida stated the other issue pertained to sidewalks.

Consensus: To approve a modification permitting locals and privates to 4-inches while arterials and collectors remained at 6-inches.

He stated the Amendments cannot "gut" the Code to the point where NGOs ("Non-governmental Organizations") or special interest groups balk against what is being done.

The fear had been that the "brighter, friendlier" customer-service oriented Growth Management Division would eliminate the good work that had been done in the past.

New Topic:

The Flood Damage Prevention Ordinance will be returned to DSAC to be updated.

- FEMA did not accept the Ordinance – there are issues to be clarified
 - FEMA set a deadline of early May or Collier County could be kicked out of the program
- Conference call with Atlanta resulted in a 4-month extension
- The BCC does not meet in August – the “tweaks” must be completed by the end of June or mid-July
- Robert Wiley will present FEMA’s criticisms at the next DSAC Meeting
- Documentation will be presented on the “all or nothing” issues – will not be discussed since there are no options – FEMA has the last word
- There are some items where input from DSAC will be necessary
- Sent a certified letter to FEMA requesting future communications are to be in writing from the Superintendent of FEMA – no emails or phone calls – to eliminate confusion from low-level reviews
 - expecting a reply from FEMA

Ray Allain requested that Staff email a copy of FEMA’s reply to all DSAC members.

Chairman Varian asked Mr. Casalanguida to provide a brief report concerning the Workshop with the BCC and the Fire Districts.

- A PowerPoint presentation was given
 - What works
 - Why a check and balance system exists between the Building Official and the Field Inspectors
 - Why the same system is needed between the Field Inspectors and the Fire Code Office
 - Explained the dysfunction
 - Cannot force a consolidation – trying for something in between
 - Currently, 4 sets of plans must be submitted by a developer – one for each of the four fire districts for review
 - Ed Riley doesn’t have control – was set up to fail
- Deadline: 180 days
- The Fire Chiefs agreed to discuss/review an opportunity to bring the Field Inspectors under Fire Review, reporting directly to Ed Riley, Fire Code Official
- Will establish a set of guidelines concerning performance standards between the Fire Districts and the County
- The Inter-Local Agreement will be re-written
- The Fire Chiefs have been supportive
- If the Fire Commissioners and the Unions object, nothing will be accomplished
- DSAC and Industry will be part of the review process along with Collier County and Fire – DSAC is a stakeholder
- All four must agree on the terms of the new Inter-Local Agreement

Jamie French:

- Submitted the April 2012 Monthly Statistics Report
 - Building Plan Review Statistics
 - All permits issued by month
 - Top 5 Building Permit Types (6-month period)
 - New Construction Building Permits issues
 - Building Inspections Performed by month
 - Land Development Services Statistics
 - Commercial Zoning Certificates – applications
 - Temporary Use Permits – applications
 - Land Development – application
 - Top 5 Land Development Applications (6-month period)
 - Pre-Application Meetings
 - SDP (“Site Development Plan”) – Applications
 - SDP Re-Submittals (Corrections)
 - Site Development Plan Amendments (SDPA)
 - SDPA Re-Submittals (Corrections)
 - SDPI (Insubstantial Change) – Applications
 - SDPA Re-Submittals (Corrections)

Jamie French stated the data is accurate to the end of the calendar month.

Bob Mulhere requested the inclusion of financial statistics in the next report and suggested either Impact Fees or the value of the permits issued. He stated the number of permits issued is less important than the value of the permits.

Mr. French stated the figures would be approximately one month behind and he will provide a separate SAP report.

Chairman Varian related his experience of obtaining a permit under “CityView” and asked why it was necessary to go to three desks:

- After the receipt is obtained, the cashier is paid,
- Next, walk to the back to obtain the drawings,
- Finally, walk back to the front to obtain the permit card.

Mr. French responded it was the way “CityView” was organized:

- Money has been allocated in the next budget for “change orders.”
- After the project has been closed out, changes will be made to the system.
- Two operational changes were recently made to the system concerning reporting structure and how Staff functions together.

He noted that, previously, the cashier would also issue the permit cards but the additional step slowed the process since there are only two cashiers. Currently, permit cards are obtained at a station across from the cashiers. The extra step was implemented to reduce wait times.

Chairman Varian requested an explanation concerning receipts from the cashier to the various departments. Questions (x 3) overhead in the lobby: “Do I need to bring this back?” and the response was “I don’t know.”

He continued:

- Previously, two receipts were printed when a permit application was submitted.
- When the application fee was paid, one receipt was given to the Permit Tech and the other to the Records Room or other department, as needed.

Jamie French explained the process of manually collecting a receipt was a way to verify that payment had been made and close out. He stated he would research the issue.

Magaly Bowman stated “CityView” retains the information under “Documents,” only one receipt is necessary because a copy can be obtained online if required. Additionally, less paper reduces filing time.

It was noted Staff will clarify with the cashiers that a second receipt is not necessary.

Chairman Varian asked how the County tracks certain full-time employees who work for more than one department to ensure the correct funding source is billed.

Jamie French replied the weighted average salary for each position was tracked on an annual basis. He cited himself as an example, i.e., a portion of his salary is paid from Fund 669, “Utility Regulatory Trust Fund.” His full-time job is to regulate private utilities. But he has picked up other responsibilities. Approximately 30% of his time, and Ken Kovensky’s time, is dedicated to utilities. Approximately 60% is paid from Fund 113. The remaining 10% is from Fund 111, i.e., “Vehicle for Hire” functions, etc. The person is identified when the Budget is presented to the Board of County Commissioners as well as the transfers in from the other Cost Centers.

He cited examples of other “dual” employees. If the volume of work dictates, a Budget Amendment can be presented to the Board of County Commissioners.

Mr. French announced the parking lot bed has deteriorated and repairs will be made and the parking lot will be re-stripped.

A. Public Utilities: Nathan Beals, Project Manager

- Nothing new to report
- No questions from the Committee Members

B. Fire Review: Bob Salvaggio, Assistant Fire Code Official, Fire Code Office

- Ed Riley is on bereavement leave
- Monthly Activity Report was submitted
 - Plan Reviews conducted – 861 – in March (February – 854)
 - Expedited Reviews conducted: five (5)
 - Overtime hours (11) were reimbursed by the contractor(s) who requested an expedited review

**C. Growth Management Division - Transportation: Reed Jarvi, Manager –
Transportation Planning**

- Monthly Reports will be alternated in the future between Jay Ahmad and Reed Jarvi
- *Engineering Report:*
 - Oilwell Road is on track
 - Davis/951 Project is ahead of schedule
 - White Boulevard Bridge: has been re-bid; new bids are being accepted and will include costs for the temporary bridge/culverts on 23rd – work will not commence until possibly July
- *Planning Report:*
 - The County Attorney’s Office is reviewing the “Corridor Protection Plan” (presented during the April meeting) – the Committee’s comments will be considered
 - Received the I-75 “IJR” (Interchange Justification Report) last week and it is under review by Staff – from a traffic standpoint, the interchange is justified since it will provide better emergency access
 - The preliminary draft is 1,551 pages – a CD will be made available upon request
 - A revised draft will be submitted to the F-DOT in 30 days and another presentation will be made to DSAC

VII. OLD BUSINESS:

A. LDC Amendment Update – Caroline Cilek and Jamie French

Caroline Cilek requested DSAC’s recommendations on the following:

- *Spandrel Glass:*
 - CBIA’s language permitted too much Staff discretion and subjectivity
 - The revised provision allows the use of Spandrel Glass to count toward the minimum percent of the primary façade

Dallas Disney:

- Issue: The LDC states that windows must not be false or applied
- When Spandrel Glass is used, you are trying to hide something behind it and could be perceived as a false window
 - as long as it is not on the outside of a building with a frame

Example: Publix has certain walled areas that open into secured areas or stockrooms or refrigerated rooms – the “window” does nothing.

Possible solution: Pierce the wall, place aluminum frames within the wall and not “applied” – but it is Spandrel and is still a “false” window with a wall behind it. The use could still be rejected.

He stated there are reasons for using Spandrel Glass as well as reasons for it being perceived as false.

Q. Are we going to continue to have a problem due to the language?

Mario Valle it could work if the language stated Spandrel glass panels were not considered to be “false” windows and will be permitted.

Carolina Valera:

- It is a good suggestion and can be added to the language.
- Trying to avoid the extreme – the language was inserted to prevent the creation of truly fake windows to meet the Code’s requirements.
- Spandrel could be a good solution when use of a clear window is not appropriate.
- NCH off Immokalee Road is mostly Spandrel because of the thick floors – the “read” of the façade from the street is as one glaze.

Dalas Disney concurred and stated the revised language should state that Spandrel glazing will not be considered as “false.”

Vice Chairman Dunnivant noted minimum glazing percentages are required on facades and to force people into a minimum percentage, regardless of the use, due to the building’s location – he did not understand why the windows couldn’t be false or applied.

Carolina Valera stated Staff will review the purpose and intent of what is meant by the “minimum” requirement. She agreed when the use of Spandrel glass makes sense, it should be allowed and counted toward the glazing percentage, and when it does not make sense – it should not be permitted.

Example: to use a portion of a “window” to display an advertisement.

Vice Chairman Dunnivant:

- He did not understand the objection.
- *Example:* There is a big block wall and the user of the building does not want vision glass into the space – why can’t a false window be applied when, to the general public, it looks every bit like a “real” glass window.

Q. What is the objection?

Dalas Disney:

- *Example:* The long wall of a stucco block building where an aluminum frame was mounted to the outside – the frame is outboard – it is false and applied. It would not be permitted.
- The language will achieve what is needed because the frame could be recessed into the block wall and attach the Spandrel glass.
- It would achieve the desired look and count toward the percentage of glazing – and it would not be “applied” to the surface of a finished wall.

Vice Chairman Dunnivant requested a definition of the term, “applied.”

Q. How deeply must a frame be recessed into a wall to comply? Will it be necessary to structurally modify the wall?

Mr. Disney explained the window would still be false, just not “applied.” There are several methods to achieve the effect.

Caroline Cilek noted the Amendment will be presented to the Planning Commission on May 3rd. She stated one option is to allow the current language. Another option is to present a revised Amendment at a later date.

She stated Carolina Valera will present it to the Planning Commission and the Board of Collier Commissioners and will ask for direction, requesting a complete review of the Architectural Standards.

Dalas Disney clarified the language change is in addition to the other items, i.e., outparcels.

Robert Mulhere moved to recommend supporting the language of the Amendment. Second by Dalas Disney. Carried unanimously, 13 – 0.

Dalas Disney moved to recommend a full review and study of Amendment 5.05.08 – “Architectural and Site Design Standards.” Second by Mario Valle. Carried unanimously, 13 – 0.

Carolina Valera stated she will present the Amendments as Staff recommendations and the revisions concerning Spandrel Glass as DSAC’s recommendation, as well as DSAC’s motions.

B. Master Mobility Plan Phase III Update – Reed Jarvi and Jeff Perry

(A copy of the MMP-III working draft and an outline were distributed to the Members.)

Jeff Perry, Transportation Planner with Stantec – WilsonMiller Consulting:

- The Board of County Commissioners approved Phase II of the Master Mobility Plan on January 21, 2012
- Goal: To amend the Growth Management Plan and the Land Development Codeto encourage good, sustainable development and to reduce vehicle miles traveled
- As a result of the year-long study, 20 recommendations were made and a majority of the recommendations were forwarded to Stantec for in-depth analysis and review
- Several items were beyond the scope of work, in particular:
 - Shift of the Road Impact Fee to a Mobility Fee
 - It is more flexible
 - Creation of a “Transfer of Development Rights Program” in the Golden Gate Estates
- The BCC directed Stantec to draft potential policy and LDC language
- **May 15th – Public Workshop (from 4:00 to 6:00PM) at the Golden Gate Community Center**

- **May 17th – Workshop with the Planning Commission (following the regular Planning Commission meeting)**
- The final draft will be completed and presented to Staff by the end of June
- Staff will present the document to the Board of County Commissioners
- In 2013, the regular vetting process will begin with various committees

Outline – “Highlights:”

- Major component: establishing a “Low Vehicle Miles Traveled Development” (LVMTD)
 - A new type of development that is geared toward providing alternatives to travel
 - Employers could provide bus transit passes or bicycle changing facilities for employees
 - Could be applied to any zoning district
 - Incentives will be provided for this type of development
 - Example: reduced Impact Fees
 - A variety of incentives will be created
- Establish requirements for a Multi-modal Mobility Analysis – similar to a traffic impact analysis
 - Determine conditions for approval as a LVMTD
- Develop and adopt a “Complete Streets Program”
 - Design public and/or private streets to provide for all modes of travel
 - Create standards and a team to review a project’s plans
- Develop a comprehensive bicycle/pedestrian safety program
 - There are serious bicycle and pedestrian safety issues in the County
 - Program will involve law enforcement, design professionals, and the public
 - Training and education will be provided at the school level
- Establish connectivity and interconnectivity issues
 - Review existing measures in the Land Development Code
- Establish Comprehensive Environmental Mitigation Program (“CEMP”)
 - Identify the portion of the Road Impact Fees that are calculated for mitigation
 - Target the funds for acquisition of environmentally-sensitive lands
 - A study will be conducted to identify the best areas to acquire

Jeff Perry noted the proposed policy statements may be incorporated into the Growth Management Plan but will ultimately find a place in the Land Development Code.

Marco Espinar noted the Pepper Ranch has already been identified for a mitigation bank. It is in the permitting process for transportation projects.

Mr. Perry stated the Pepper Ranch could be the first on the County’s list – the CEMP will not try to divert funds from the way the County is currently using.

Reed Jarvi noted an important issue:

- The allocation (“set-aside”) of road project costs (approximately 4% per project) to use for “land-banking” of environmentally-sensitive areas

Ray Allain asked what was the purpose of the Master Mobility Plan – was it related to the environmental or energy.

Jeff Perry replied it began as a Vision Plan of the County which focused on the build-out of the County.

- Nick Casalanguida recognized the County could not afford to build everything that might be needed and a way had to be developed to reduce the travel demand that would be generated in the future.
- It “morphed” into a Study on ways to conserve energy.
- A grant was obtained from the U.S. Department of Energy to conduct the Study and find ways to reduce the amount of travel and vehicle miles traveled
 - Reduce “greenhouse” gases, etc.

Bob Mulhere noted there had been a great deal of public involvement in the process and suggested some of the concepts. One idea discussed was to charge a higher fee if a development had a higher impact on the transportation network, i.e. if the average trip length was much higher. The focus was on true voluntary incentives which would run with a property.

For example, if there was a reduction in parking spaces which yielded a larger building footprint, the commitment to provide an alternative mode of transportation (bus passes) would have to be honored in the future. There is a large divergence between what is predicted as needed for roadway improvement based on growth and what can be afforded. One way to reduce the need for roadway improvements is to reduce the number of trips – reserve capacity. If the average trip length can be reduced incrementally, for example, by providing a conveniently located shopping center, it will have an impact.

Option: The County can examine land-use patterns and identify locations where a mixed use development or employment center would be appropriate.

Dalas Disney asked Bob Mulhere to define the extent of his involvement.

Reed Jarvi explained Bob Mulhere is a subcontractor for Stantec , i.e., he is a consultant to Stantec.

Mr. Mulhere stated, due to a potential conflict of interest, he would not vote on any recommendations made by DSAC concerning the Master Mobility Plan.

Dalas Disney stated certain terms [“fees,”- “mobility fees,” -“TDR,”- “reduced density”] have great impact. He does not support Impact Fees in any form and views the MMP as a way to create new fees. It seems as though it’s just another line item. It is difficult enough for the majority of residents to just live in Collier County without thinking about another fee. In Denver, he rode the bus to/from work on a daily basis.

Suggestion: Develop a bus system in Collier County and it will be used.

He stated he cannot ride the bus from his home in Golden Gate Estates to his office, near Goodlette, because it is not available.

Comment: As we begin to come out of the economic downturn, finding funding for the programs will be a huge issue.

Mr. Perry clarified Stantec is not working on the mobility issue or the Golden Gate Estates TDR issue. The items were specifically excluded from the scope of work. He stated the BCC did ask for further study of the issues. The issues will be examined by the County in more detail in the future.

Laura DeJohn stated she finds the prospect frightening of how the Estates may look in the future if gas prices continue to increase, making it even more difficult for residents to live/remain there – it could become a “ghost town” – that is more frightening than the mechanics of a mobility fee.

Mario Valle stated reducing density created the urban sprawl and increased number of trips. He asked if DSAC will be directed to examine policy decisions with the perspective of increasing density and providing better transportation.

Bob Mulhere stated it would most likely apply to a re-development scenario or an undeveloped area scenario. Most of Collier County that is already developed at 2.2 units per acre will not change. There are a number of challenges – there is no urban area as a primary focus for people to go to for employment and return home. We are not a suburban commute to an urban and back. The costs will not be huge because the improvements will be done incrementally.

Reed Jarvi:

- The federal grant ends at the end of July.
- The mobility fee issue will be part of the next Road Impact Fee Update and the Study is scheduled to begin this summer.
- There is not a direct cost – beyond staff time – the program has been proposed as “voluntary.”

VIII. NEW BUSINESS:

A. Update on BCC April 26th Fire Workshop – Chairman William Varian

- A number of DSAC members attended and spoke
- DSAC should follow the progress - there were a number of comments between Commissioner Fiala and Fire Commissioner Lombardo
- He encouraged members to become involved

IX. COMMITTEE MEMBER COMMENTS:

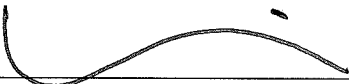
- **Ray Allain:**
 - Collier County is “light years ahead” of other counties in the Country
 - He cautioned the personal element is often overlooked or omitted, i.e. the landowners
 - The flexibility fee will be punitive – anyone building a new house in the Golden Gate Estates will end up paying more
 - There is no other end beyond higher density
 - Concern: Keep the personal element present otherwise property owners’ rights will be altered by default

NEXT MEETING DATES: *(Meetings will commence at 3:00 PM unless otherwise notified)*

- **June 6, 2012**
- **July 11, 2012**
- **August 1, 2012**
- **September 5, 2012**

As there was no further business for the good of the County, the meeting was adjourned by order of the Chair at 4:36 PM.

**DEVELOPMENT SERVICES
ADVISORY COMMITTEE**



William Varian, Chairman

The Minutes were approved by the Board/Committee Chair on 6/6, 2012
 “as submitted” OR “as amended” .