

MINUTES REPORT
LOCAL PLANNING AGENCY
July 27, 2009

MEMBERS PRESENT:

Noel Andress (Chair)
Cindy Butler
Carie Call
Jim Green

Mitch Hutchcraft
Ron Inge (Vice Chair)
Carla Johnston

STAFF PRESENT:

Peter Blackwell, Zoning
Brandon Dunn, Zoning
Lisa Hines, Zoning
Dave Loveland, DOT
Janet Miller, Recording Secretary

Matt Noble, Planning
Paul O'Connor, Planning Director
David Owen, Asst. Cty. Atty.
Dawn Perry-Lehnert, Asst. Cty. Atty.

Agenda Item 1 – Call to Order, Certificate of Affidavit of Publication

Mr. Andress called the meeting to order at 8:30 a.m. in the Board Chambers of the Old Lee County Courthouse, 2120 Main Street, Fort Myers, FL. Ms. Perry-Lehnert, Assistant County Attorney, certified that the affidavit of publication was legally sufficient as to form and content and entered it into the record.

Agenda Item 2 – Pledge of Allegiance

Agenda Item 3 – Public Forum

Mr. Jim English, Alva Resident, discussed a proposed Settlement Agreement relating to a lawsuit that Lee County has against Charlotte County relating to the Babcock Ranch situation. He distributed copies to the LPA. Mr. English noted he had difficulty receiving this information, which he did not appreciate. He stated the public should have a right to this information. He requested that before this item goes before the Board of County Commissioners that the LPA have a hearing on it so that the public can have a better understanding of what is taking place.

Mr. Andress noted that the Babcock Ranch project was on today's agenda (Item 5D) and that these concerns should be deferred until that portion of the meeting.

Agenda Item 4 – Approval of Minutes – June 22, 2009

Mr. Inge made a motion to approve the June 22, 2009 meeting minutes, seconded by Ms. Johnston. There being no further discussion, the motion passed 7-0. It was decided that future copies of meeting minutes will have the blue cards excluded from the back-up.

Agenda Item 5 – 2008/2009 Regular Lee Plan Amendment Cycle

A. CPA2008-17 – Incorporate Commercial Uses in the Coastal Rural Future Land Use Category

Mr. Noble reviewed the staff report with the LPA and noted that staff is recommending transmittal of the amendment.

General questions and answers ensued between the LPA and staff.

Mr. Andress asked if anyone from the public wished to comment on this item. Public Comment was received from:

Mark Dean, representing Dean and Dean Farms, William Mantis, Bill Wright, representing Pine Island Agriculture & Land Assoc., Dr. Russell Weintraub, Matt Uhle, representing Pine Island Agriculture & Land Assoc., Tom Scannek, representing Stringfellow Isle LLC, Phil Buchanan, representing, Greater Pine Island Civic Association, Kathryn Aldridge, and Dr. Michael Dreikorn, President of the Bokeelia Civic Association and resident of Bokeelia

Ms. Call stated she was not in favor of expanding the commercial center as it was not good for the environment or the island. She recommended Mr. Buchanan's proposed language.

Ms. Johnston referred to Policy 14.4.6 where it mentions 2 acres of impervious area for parking and building. She noted that in Sanibel impervious areas are taken seriously. If this amendment was transmitted, she preferred to have the parking areas not be impervious. Staff noted impervious parking is allowed in the code.

Mr. Andress expressed several concerns he had with this amendment: 1) the LPA has not been provided with a map showing where the 29 parcels are located and how many are on Stringfellow Road; 2) concern has been expressed with merging rural areas with urban areas; 3) why is the County only addressing rural areas and not commercial or urban areas; 4) two civic associations stated they had not had meetings with their general membership to discuss these issues and to develop a set of uses they felt were appropriate in the different rural and urban areas of Pine Island; 5) the boundaries of the villages are unclear; and, 6) he felt the presentation today was incomplete. Due to these reasons, Mr. Andress felt the item should be continued until there has been adequate time for the community to have their concerns considered and everyone has a better understanding of what will be in the rural and urban areas of Pine Island.

Mr. Noble clarified that this amendment was included in this year's cycle and would need to be presented before the Board of County Commissioners in September.

Ms. Johnston was in favor of the item being continued to the August 24th LPA meeting to give staff time to provide a map with the updated staff report and some indication of what the impact would be both in terms of concerns about excessive growth and property uses for people who own property that might be impacted by this. **Ms. Johnston made a motion to continue this item to the August 24, 2009 Local Planning Agency meeting and that staff should be prepared next month to provide clarification on some of the questions raised today by the LPA and the public in addition to providing a map, seconded by Mr. Green.**

Mr. Hutchcraft was in favor of additional evaluation if staff could come up with a map that was appropriate. He appreciated staff's attempt to balance and hoped that whatever discussions take place that staff tries to maintain that balance between those rights. Mr. Hutchcraft noted those rights had been limited over time and the continual erosion of that is not probably something the County is looking at.

Mr. Inge referred to Page 6 of 14 where it states that the majority of the 29 parcels in question were zoned prior to the 1984 adoption of the comprehensive plan and prior to adoption of the coastal rural category. He believed staff was trying to give some definition as to what uses are allowable within those parcels. He felt staff did an adequate job, he understood their intention, and was in support of staff's recommendation irregardless of whether or not this item is continued for another month.

There being no further discussion, the motion passed 7-0.

B. CPA2008-15 – Pre-Disaster Buildback

Mr. Blackwell reviewed the staff report and recommendation.

General questions and answers ensued between the LPA and staff.

Due to a question by Mr. Address, staff clarified that mobile homes were not addressed in this amendment because it is an extensive issue. Staff decided to work on multi-family first and address mobile homes at a later time.

Mr. Address opened this item to public comment. No public input was received.

Discussion took place regarding Policy 5.2.1 as to why over-density multi-family redevelopments would be considered on a case by case basis. Staff explained the case by case was for the purposes of determining what process someone needed to be in.

Mr. Hutchcraft requested staff clarify that in the language.

Ms. Butler agreed the case by case basis needed to be clarified. She also referred to Policy 5.2.3 that reads “In order to establish the” followed by a colon. She noted this should be rewritten and clarified. She also asked that language be included that would require an existing and proposed plan be submitted.

Ms. Johnston referred to the height restrictions. She did not have a problem with there being flexibility, but she felt the developments needed to fit in the community that it is located in. She did not feel the language reflected this.

Mr. Inge made a motion to recommend transmittal of CPA2008-15 with a clarification of the last sentence of Policy 5.2.1 relative to the discussion that staff and Mr. Hutchcraft had on clarifying the process and Policy 5.2.3 to outline that it pertains to the provision of a plan that indicates that type of information, seconded by Mr. Hutchcraft. There being no further discussion, the motion passed 7-0.

C. CPA2008-22 – Update Conservation Lands

This item was removed from the agenda.

D. CPA2006-08 – Babcock Ranch

Mr. Noble reviewed the staff report and recommendations.

General questions and answers ensued between the LPA and staff including Dave Loveland.

Mr. Address opened this item for public comment. Public input was received from:

Janet Tripp, Ruby Daniels, President of Alva, Inc., Steven Brodtkin, William Redfern, BJ Gerald, Alva, Inc. Larry Murphy, Ed Kimball, East Lee County Council, Debbie Jackow, Matt Smith, Concerned Citizens of Bayshore Community, James English, Jr., Carl Veaux, Sierra Club, Responsible Growth Management Coalition, and Tom Mulling II, North Olga Community Planning.

Mr. Joe Grubbs, Agent for the applicant, addressed questions and comments raised by the public and LPA members. Mr. Grubbs noted his group would continue working through all issues as this item goes through the process; however, they cannot get to the design phase unless there is a mechanism and process in place, which is what this amendment would provide.

Mr. Green stated that although he hears terms such as “framework, “just a process,” “does not mean this is approved,” or “preliminary,” he also has heard that the County is committed by prior documents. He did not feel the plan presented today was a good plan for Lee County. He did not agree with approving this and figuring out the specifics later. He felt the developer should figure out the specifics first and then get the amendment approved. Mr. Green wanted the onus to be on the developer to come up with a plan that everyone can live with and that since the development is in Charlotte County it should be up to Charlotte County staff to figure out how to get traffic from Babcock over to one of the main arteries without going through Lee County’s rural areas.

Ms. Johnston discussed concerns over operating costs for the roads in terms of maintenance and public safety. If the revenue goes to Charlotte County, Lee County tax payers should not bare the burden. Those using the roads will be paying advalorem taxes to Charlotte County. Ms. Johnston also discussed whether real estate takings associated with the widening of the proposed roads would reduce the tax base so that advalorem taxes would be spread among fewer tax payers. She discussed the possibility of alternative modes of transportation such as express bus routes and monorails, which she felt would be cheaper alternatives than the cost entailed with creating and widening all of the proposed roads depicted on Map 3A. Ms. Johnston stated further analysis was needed as to the role of Charlotte County. She also asked for an analysis on how Senate Bill 360 would affect the County.

Mr. Hutchcraft stated that the Babcock project would move forward with or without Lee County. He stated that if Lee County does not establish a mechanism where it clearly states what improvements are the applicant’s responsibility, it could expose Lee County to fund the improvements. He was in agreement that there were many unresolved issues such as maintenance costs, impacts of the proposed roads, alternative alignments, alternative transportation types, and infrastructure, but he was in favor of this amendment so that those issues could be addressed and discussions could take place as the process moves forward. It creates the opportunity for more public involvement. He asked for stronger language for Policy 36.3.1 that clearly states we are looking first and foremost at an east/west corridor.

Mr. Inge stated Babcock Ranch would move forward in some form or fashion. If this amendment does not get transmitted, there could be a time in the future when people will wonder why a mechanism was not established to make sure Lee County had impact or influence. Mr. Inge liked the fact that this amendment gives a broad view that shows the theoretical things that would need to happen based on the modeling that the developer has proposed, which he believed staff concurred with. He had a level of comfort since DOT staff looked at this extensively and were comfortable with the way it was designed. He also noted that some of the road improvements depicted on the maps would be necessitated without Babcock Ranch. However, as part of this amendment, the cost of those improvements will be placed on the developer as opposed to Lee County. He agreed that some issues needed to be addressed such as maintenance costs, alternative methods of transportation, and language in Policy 36.3.1. However, in summary, he was still in favor of the amendment because it establishes a process and gives Lee County the ability to negotiate on possible east/west connectors by strengthening some of the language in 36.3.1.

Ms. Butler stated it came down to the proposal and the fact that there will be more roads in Lee County, which will have negative impacts to rural character and charm. It will also create pressure for further development. She wanted to see a road plan that the communities could live with.

Ms. Call appreciated that we were asking the developer to pay for the impacts to Lee County, but she did not feel that went far enough. She felt the language should include the long term maintenance of these facilities. As a supporter of community plans, she felt this plan conflicted with community plans that are already in place in the Lee Plan. To her, these road widening proposals would completely remove the rural character of the area. She also referred to comments made by Mr. Grubbs that he had met with LPA members. Ms. Call noted she had never met with Mr. Grubbs or had any communication with him. She was also in favor of alternative modes of transportation, such as utilizing an existing rail line instead of widening the roads and wanted to see that included in any future iterations brought forward.

Mr. Andress noted that his main issue was that the Commissioners had not approved the Independent District Funding. No funding can take place until this issue is resolved. He noted the Commissioners did not approve the Independent District funding because of unanswered questions with this amendment. These questions need to be answered before the County plans any in terms of roads or anything as far as Lee County is concerned with the Babcock Ranch development. He recommended a motion recommending non-transmittal.

Ms. Johnston made a motion to recommend non-transmittal at this point pending the receipt of further analysis. The first request is that a substantive analysis be done on something other than roads. She noted that a lot of analysis has been done on roads, but not on anything else. The second request is to have some type of financial analysis on the impact to the Lee County taxpayer. The third request is to get some analysis related to Senate Bill 360. Ms. Johnston wanted to understand more thoroughly what the options are and whether there are other directions for the County to move with Charlotte County. In addition, the Commissioners have not resolved the Independent Special District funding. Therefore, the motion is to recommend non-transmittal until there are answers to these questions. The motion was seconded by Mr. Green.

Discussion took place whether it would be beneficial to postpone this for a month to give staff time to get answers to some of these questions, but it was determined that the answers would not be derived within a month.

There being no further discussion, the motion passed 5-2. Mr. Inge and Mr. Hutchcraft were opposed.

Mr. Andress noted the LPA had an agreement with the County Attorney's office that whenever the LPA has a different recommendation than staff, the County Attorney's office will prepare a brief summary and provide it to the County Commissioners so that they understand why the LPA took a different position on the item.

Mr. Owen stated that he and Ms. Lehnert had taken extensive notes and would prepare a brief summary.

Mr. Inge asked that his opinion and those expressed by Mr. Hutchcraft be reflected in the summary as well so that the Commissioners understand why they were not in support of the majority position.

E. CPA2008-27 – Commercial/Industrial Lands Study

Mr. Peter Blackwell reviewed the staff report and recommendations.

General questions and answers ensued between the LPA and staff.

Ms. Johnston referred to Policy 158.5.2 and asked that the word “existing” be added so that it reads “...and any existing and future institutions of higher learning...” Staff agreed to the amendment.

Mr. Andress opened this item for public comment. No public comment was received.

Mr. Inge made a motion to recommend transmittal of CPA2008-00027 with the amendment to Policy 158.5.2 that says “...and any existing and or future institutions of higher learning...” in conjunction with Ms. Johnston’s comment, seconded by Ms. Call. There being no further discussion, the motion passed 6-0. Mr. Hutchcraft left the room briefly during this segment and was not present for the vote.

F. CPA2008-07 – Lehigh Acres Community Plan

Mr. Inge referred to a map that was included with this amendment. There is a recommendation to alter the comprehensive land use designation on a parcel of which he is part owner. Mr. Inge noted he spoke to the County Attorney’s office and they recommended that since he owns property in the area that will be affected by this amendment, he should not vote. Therefore, Mr. Inge stated he would participate in the discussion, but not vote.

Mr. Dunn reviewed the staff report. He noted this is a draft report and that staff was not seeking any formal action today. He provided background information on the project.

General questions and answers ensued between the LPA and staff.

Mr. Hutchcraft referred to language in the Vision Statement regarding pedestrian nature and having opportunities for open space. However, in reading the proposed policy language, he did not see anything that provided some emphasis on achieving those specific outcomes. He also stated there should be some discussion about minimum densities within those targeted areas for additional development rights. He referred to Policy 32.13.1 that addresses an escheatment process and felt that was important, but he suggested language be added that encourages the combination of lots and clustering of development rights. He expressed concerns with the targeted areas developing and sharing infrastructure and felt more work was needed on that. Mr. Hutchcraft also mentioned that surface water management is a big challenge in Lehigh. He asked if there was a way the County could acquire those parcels and establish precedent so that stormwater management could be set aside for that area.

Mr. Andress opened this item for public comment. Public input was received from:

Matt Uhle, esquire, representing two clients (Barry Gionfriddo and Lake Lincoln, LLC)
Damon Shalon, representing Lehigh Acres Planning Council
Bo Turbeville, representing Lehigh Acres Planning Council

Mr. Inge noted one of the speakers mentioned trying to fine tune some of the language by putting in words such as “required” or some other type of absolute terms. He noted the goal was to try and encourage some types of development in Lehigh because there is less than what is needed when it comes to commercial development. He cautioned the use of absolute terms in the plan because it could preclude some opportunities that the community might want.

Discussion took place that if this item was transmitted today, there would still be opportunity for staff to make some small changes and for the public to make further comments before the item is presented before the County Commissioners.

Ms. Call made a motion to recommend transmittal of CPA2008-00007 Lehigh Acres Community Plan, seconded by Mr. Green. There being no further discussion, the motion passed 6-0. Mr. Inge abstained.

G. CPA2008-06 – Implementing DR/GR Study

Mr. Jason King from Dover Kohl & Associates gave the LPA a PowerPoint presentation. He and Dr. James Nicholas also reviewed and discussed the Transfer of Development Rights report. Mr. Spikowski and Mr. King talked about questions that came up regarding the Comprehensive Plan Amendment language at the last LPA meeting. He noted the TDR in front of them was not anything needing action today.

General questions and answers ensued between the LPA, staff, Mr. Kevin Erwin, Dr. Nicholas, Mr. King, and Mr. Spikowski.

Mr. Andress opened this item for public comment. Public comment was received from:

Connie Carter, representing Carter Family and Corkscrew Country Store, Dave Depew representing Troyer Brothers, Matt Uhle, esquire, representing Lake Lincoln, LLC, Nicole Ryan, Conservancy of SW FL, Neal Noethlich, Dave Urich, Responsible Growth Management Coalition, James Fraser, representing Shadow Wood, Brad Cornell, Collier Audubon Society, Audubon of SW FL, and Audubon of Florida, Stewart Katz, representing Wildcat Run, President of the Community Association Board, Jack Meeker, Nancy Payton, representing Florida Wildlife Federation, Marilyn Edwards, representing Brooks Concerned Citizens, Estero Community Leaders, Peggy Apgar Schmidt, Don Eslick, Estero Council of Community Leaders, Roger Sims, Esquire, representing Cemex, Mark Stephens, representing Cemex, Bob Mulhere, representing Cemex, Neale Montgomery, esquire, representing Cemex and Old Corkscrew, Eugene Atchison, Steve Hartsell, Esquire, representing Bennett Trust and The Fountains, and Michael Roeder, Esquire.

Mr. Inge reminded the LPA that he had a conflict of interest that was disclosed at the last two meetings as he has a client in the DR/GR area. The appropriate form has been filed. He referred to comments by Mr. Uhle that the applicant is focusing the TDRs on residential and density transfers for residential, however, discussion has not taken place on intensification of industrial or commercial uses in the area. There has been no discussion on how to provide incentives so that there will be more intense development in this area particularly since it is close to the Lehigh Acres area. He also agreed with Mr. Uhle's comments where he noted that in Section 3 of the TDR proposal there is some very detailed site plans by community. The language should state clearly that those are illustrative on what could theoretically happen, but are not regulatory. It is only a design standard that will be used. Mr. Inge discussed his concerns with only allowing mining up to 2030 since that is only 20 years from now. He did not believe the demand for material would decrease in 20 years. The year 2030 seemed to be too short of a horizon. He expressed concern over the 1953 levels that make them more binding than advisory. He felt the County should explore more opportunities to help the viability of the TDR program and get away from the concurrency issues on SR 82. He was also concerned with conflicts on the maps where there are overlays of the AG uses, mining uses, and priority zones, which mesh on top of each other. He was concerned that the priority acquisition areas would take center stage while the other uses fall behind. Regarding mixed use communities, he was concerned they may not meet the site location standards. Does this preclude the intensification of commercial and industrial use at those locations since they do not meet standards currently in the plan? He referred to DHI model comments and noted this involved 83,000 acres of a community with tracts owned by a variety of people. He was not in favor of placing a regulatory framework without ensuring that all appropriate data and information is in place. He cautioned the LPA on moving forward with this just so it can be included in the cycle.

Per a request by Ms. Butler, Mr. Spikowski and staff reviewed the memorandum outlining the issues where staff and the applicant disagree.

Ms. Call made a motion to recommend transmittal of CPA2008-06 as staff recommends, seconded by Mr. Green.

Mr. Hutchcraft referred to comments made by Don Eslick that five or ten years ago all these uses that we are talking about today are uses that were permitted. They are trying to find a way to move them to reasonable places so they are not in conflict. In order to do that, Mr. Hutchcraft stated several things must be in place: 1) A TDR program that does what we want it to do, which is not the case with the TDR ordinance reviewed today; 2) What happens if you get more commercial in these receiving sites and have less area for TDR transfers and less compensation for land owners?; 3) The level of service issues and market issues have not been addressed; 4) The appropriate data and analysis is not in place; 5) He expressed concerns with the 1953 data; 6) It is appropriate to see where the County can restore and make improvements, but there should be sufficient flexibility; 7) Regarding the tier map, acquisition map, and map 14, there is the potential of eroding rights that the County did not intend to erode. There is a potential for unintended results by the duplication of those layers; 8) He expressed concerns with Policy 1.7.12 that implements the mining map. It seemed those locations were selected from a planning basis rather than a resource basis; and, 9) He felt there should be a map showing where the natural resources are because there are rights being precluded. For those reasons, he could not support the motion to move this amendment forward because these items need to be addressed in more detail.

Ms. Johnston noted that in the verbal conversation, staff indicated that the 1953 map was not regulatory, but simply information, yet this is not specified in the language. She asked that this be clarified in the language. She also discussed her interpretation of the tier issue. The language does not state that one tier takes priority over another. It seemed to her there could be some flexibility for a case by case basis. Staff agreed with her interpretation, so she asked that the language be adjusted to clarify it. She was concerned with the many questions associated with TDRs. She agreed that the commercial/industrial uses are one option aside from residential especially since that is one thing the County says they are interested in for the Lehigh area.

Ms. Call stated she would amend her motion to include the language clarifications mentioned by Ms. Johnston. Mr. Green agreed to the amendment.

Mr. Andress stated more work was needed on this amendment, which has been admitted by the consultants and staff. Since this is such a big issue for the County, he was reluctant to vote for this motion to move this amendment forward at this time. Mr. Andress stated he wanted the TDR program to be successful and believed that could be accomplished if everyone worked together.

The motion was called to question. The motion passed 4-2. Mr. Andress and Mr. Hutchcraft were opposed. Mr. Inge abstained.

Agenda Item 9 – Other Business - None

Agenda Item 10 – Adjournment

The next meeting is scheduled for Monday, August 24, 2009, at 8:30 a.m. in the Board Chambers. The meeting adjourned at 5:50 p.m.