

CPA2007-02
CONOVER PRIVATELY SPONSORED
SMALL-SCALE AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Adoption Document

Lee County Planning Division
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March 11, 2008

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2007-00002**

Text Amendment

Map Amendment

	This Document Contains the Following Reviews:
✓	Staff Review
✓	Local Planning Agency Review and Recommendation
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: February 18, 2008

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVE:

Chris Conover

Represented by Matt Uhle of Knott, Consoer, Ebelini, Hart & Swett, P.A.

1625 Hendry Street Third Floor

Fort Myers, FL 33902

- 2. REQUEST:** Amend the Future Land Use Map Series for an approximate 21,600+/- square foot site located in Section 35, Township 45 South, Range 22 East, to add the site to Map 12, the Water Dependent Overlay Zones. The site is generally located on the east side of Stringfellow Road just south of York Road.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Planning staff recommends that the Board of County Commissioners approve the proposed amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The Water Dependent Overlay Map (WDO) became effective on March 1, 1989.
- The WDO zones were created to preserve existing water-dependent uses.
- The subject property is in the Suburban Future Land Use Category.
- The applicant has submitted an affidavit stating that the subject property has been in use as a boatyard since 1986.
- Property Appraiser records show that the existing commercial office building on the north lot of the subject property was built in 1971.
- The applicant has submitted a federal income tax document for the business for tax year 1989.
- Some of the land uses on the property fit the definition of boatyard.
- The C-1 zoning district permits marina and marina ancillary uses that fit the definition of “existing only.”
- In order to be considered “existing only” by the LDC, the marina uses on the subject property needed to be in existence prior to September 27, 1993.
- The Marina and Marina Ancillary uses on the property have been in operation since at least as early as 1986.

C. BACKGROUND INFORMATION

Lot Description and History

The subject property consists of Lots 1 and 2 of the Gulfhaven Unit P subdivision. This subdivision was first platted in December 1953 in Plat Book 9 Page 105. The lot descriptions are the same as when they were first platted. Both lots are currently zoned C-1. Both lots are in the Suburban Future Land Use Category on Lee Plan Map 1, the Future Land Use Map. The northern lot is occupied by a small building with signage stating, “Bob and Annie’s Marina.” The southern lot is currently occupied by a marine railway and winching system. The subject property is abutted on the south side by a store, on the west by Stringfellow Road, and on the north and east by the Dawson canal across which are single-family residences.

The northern lot was purchased by the applicant’s family in 1986 and the southern lot in 1988. An affidavit signed by the applicant states that the subject property has been operating as a boatyard since 1986, prior to the adoption of the Water-Dependent Overlay Map. In addition, the applicant has submitted a Form 1040 “Profit or Loss From Business” Tax form for the year 1989. In this form, the business is shown as “Bob and Annie’s Marine Railway.”

A fire destroyed the back portion of the building on the northern lot. This fire also destroyed most of the applicant's business records.

The Water Dependent Overlay Map

There are limited locations in Lee County that are suitable for water-dependent uses such as boatyards and marinas. It is important to keep these uses from being displaced or pre-empted by non-water-dependent uses that can be located away from the shoreline. Therefore, the Water-dependent Overlay Zones were created so that non-water-dependent uses could only replace water-dependent uses following a public hearing. The Water Dependent Overlay Map (WDO) became effective on March 1, 1989. It was first adopted by Ordinance 89-02 and later amended by Ordinance 03-04.

Relevant Lee Plan Goals, Objectives and Policies

There are several policies in the Lee Plan that apply to the proposed amendment:

POLICY 1.7.5: *The Water-Dependent overlay zone designates shoreline areas where priority will be granted to water-dependent uses. Specific requirements are detailed for such zones on San Carlos Island under Goal 12, in the Greater Pine Island area under Goal 14, and for other areas in Lee County in the Conservation and Coastal Management Element.*

GOAL 8: MARINE-ORIENTED LAND USES. *To designate prime locations for marine-oriented land uses and protect them from incompatible or pre-emptive land uses.*

OBJECTIVE 8.1: *Existing marinas, fish houses and port facilities indicated on the Future Land Use Map as having water-dependent overlay zones will be reclassified by the county to commercial and industrial marina zoning categories to protect their rights to rebuild and expand and to prevent their conversion to non-water-dependent uses without a public hearing.*

POLICY 128.1.1: *Commercial and government-operated multi-slip docking facilities indicated on the Future Land Use Map as having water-dependent overlay zones will be reclassified by the county to marina zoning categories to protect their rights to rebuild and expand and to prevent their conversion to non-water-dependent uses without a public hearing.*

POLICY 128.1.2: *The Future Land Use Map will designate water-dependent overlay zones over existing commercial fishing, port and docking sites and commercial marinas to protect their rights to rebuild and expand and to prevent their conversion to non-water-dependent uses without a public hearing.*

POLICY 128.4.1: *In water-dependent overlay zones, the special provisions contained under Goal 8 of the Future Land Use Element will also apply.*

Section 34-2 of the Lee County Land Development Code (LDC) provides relevant definitions for the proposed amendment:

Existing Only. The use is permitted only if it lawfully existed on September 27, 1993 or was granted a special exception within two years prior to that date and commenced the approved

construction within two years after that date. A use that qualifies as "Existing Only" will not be classified as a nonconforming use. It will be afforded the same privileges as a permitted use and may be expanded or reconstructed, in accordance with all applicable current regulations, but only on the specific parcel on which it is located, as that parcel was legally described on September 27, 1993.

Marina means a commercial or industrial Water-Dependent Use located on property adjacent to water with direct access to a navigable channel. The primary function must be to provide commercial dockage, mooring, storage and service facilities for water-craft and land-based facilities and activities necessary to support the water-dependent use. The term "marina" does not apply to docks, davits, boathouses and similar docking facilities that are accessory or ancillary subordinate to: 1) residential buildings that are located on the same premises and are under the same ownership or control as the docks, davits, boathouses, boat ramps, and similar docking facilities; and 2) commercial or industrial establishments that are not Water-dependent Uses.

Marina Accessory uses means normally ancillary and subordinate to a marina, including but not limited to: sale of marine fuel and lubricants, marine supplies, boats, boat motors, and boat parts; restaurant or refreshment facility, boat rental, minor boat rigging and motor repair. However, no dredge, barge, or other work dockage or service is permitted and no boat construction or reconstruction is permitted. See Boatyard.

Boatyard means a boating or harbor facility located on or having direct access to navigable water for building, maintaining, and performing extensive repair on boats and small ships, marine engines and equipment. A boatyard shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway or large capacity lifts used to haul out boats for maintenance or repair. See Marina.

Definitions

Chapter XII of the Lee Plan provides the following definitions:

WATER-DEPENDENT USES- *Land uses for which water access is essential and which could not exist without water access.*

WATER-RELATED USES- *Land uses that might be enhanced by proximity to the water but for which water access is not essential.*

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

The intent of the Lee Plan WDO is to preserve established water-dependent uses. Lee Plan policies 128.1.1 and 128.1.2 state that the County is to create Water Dependent Overlays (WDOs) on existing water-dependent uses. Therefore the county is obligated to consider the subject property for inclusion in the WDO Map.

In order to be included in the WDO, a parcel needs to have been in existence at the time the WDO map was created. The WDO Map became effective on March 1, 1989. The applicant has provided an affidavit stating that the subject parcel was a boatyard prior to this date. The applicant has also submitted a tax document showing that a "Marine Railway" was operating on the property at least since the effective date of the WDO Map. In addition, county records indicate that a commercial building was created on the property in 1971. Therefore, the property has been in commercial use since before the adoption of the Lee Plan in 1984.

The C-1 zoning district permits marina and marina ancillary uses that fit the definition of "existing only." In order to be considered "existing only" under the LDC, the marina uses on the subject property needed to be in existence prior to September 27, 1993. Based upon the documents provided by the applicant, it appears that the marina use has been in existence since 1984, well before the 1993 cutoff date. The C-1 category does not permit those uses listed in the definition of boatyard. Some of the commercial activities on the property such as boat repair or the marine railway fall under the LDC definition of "boatyard." Therefore, the subject property is currently not in conformance with its zoning.

If the property is designated as a WDO, Lee Plan Goal 8 states that the County will rezone the property to Commercial Marina (CM) or Industrial Marina (IM) zoning. Commercial uses greater than neighborhood centers and industrial uses are not permitted in the Suburban Future Land Use category.

B. CONCLUSIONS

The Water Dependent Overlay was created to preserve existing marinas and other water dependent uses. Lee Plan Policies 128.1.1 and 128.1.2 both state that the County will designate existing marinas as WDOs. The applicant has demonstrated through documents that the water dependent uses were in existence when the WDO was created. Including the property in the WDO will necessitate a rezoning Per Lee Plan Goal 8. The long established uses on the subject property and the need to preserve the diminishing number of sites suitable for water-dependent uses establishes sufficient justification to the proposed amendment.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners amend the Lee Plan Map 12 by including the subject property in the Water-Dependent Overlay.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC LPA HEARING: February 25th 2008

A. LOCAL PLANNING AGENCY REVIEW

Planning staff and the applicant made short presentations. One LPA member asked if including the property in the Water Dependent Overlay would specifically preserve water access points. Staff responded that the WDO does not specify exactly which uses will be preserved, only that "Water Dependent" uses are preserved. The same member then asked if including the subject property in the WDO would prevent its conversion to residential or other uses. Staff responded that being in a WDO means that a public hearing is required in order to replace water dependent uses with non-water dependent uses in the WDO zone.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the Board adopt the proposed amendment to the DCA.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	AYE
LES COCHRAN	AYE
RONALD INGE	AYE
JACQUE RIPPE	ABSENT
CARLETON RYFFEL	AYE
LELAND M. TAYLOR	AYE
RAY ANN WESEL	AYE

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: March 11, 2008

A. BOARD REVIEW:

Planning staff and the applicant gave brief presentations. Members of the public spoke on behalf of the project and one member of the public spoke against it. The person speaking against the amendment cited pollution and other issues with the business on the subject property. The owner of the business then stated that the property has been cleaned up and further problems will also be addressed. Planning staff corroborated the state of the property and noted that the proposed amendment is the first part of a two-stage process. The second stage would involve the Planned Development rezoning process. One commissioner stated that there is a definite need to preserve boatyards within Lee County.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

The Board voted to adopt the proposed small scale amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The commissioners accepted the findings of fact as advanced by staff.

C. VOTE:

A. BRIAN BIGELOW	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
FRANKLIN B. MANN	<u>AYE</u>