

**PAT 96-46
BoCC SPONSORED
EAR ADDENDUM AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Adoption Document

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June 3, 1998

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
PAT 96-46**

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

STAFF REPORT PREPARATION DATE: April 29, 1997

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Amend the definition of Density in the Lee Plan Glossary to correct the apparent inconsistent language.

B. BACKGROUND INFORMATION

This amendment was initiated by the Evaluation and Appraisal Report Addendum Report as adopted by the Board of County Commissioners on February 1, 1996. The report contained the following:

The definition of the term "Density" was modified during the last round of amendments. The intent of the change was to exclude only natural, navigable water bodies from density calculation, allowing man made and non-navigable water bodies to be included. At that time a word was inadvertently left in the definition that causes an inconsistency.

Recommendation: *Initiate an amendment that will remove the inconsistent language from the definition of Density in the Glossary.*

C. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Staff recommends the definition of Density be revised as shown below:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made water bodies ~~which are entirely~~ contained within the residential development. Lands for commercial, office, ~~and~~ industrial uses, natural; navigable water bodies, and other non-residential uses shall not be included.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

Density from man-made water bodies has already been accounted for through the Lee Plan Future Land Use Map. Withholding this density from properties that do not contain the entire water body places an undue hardship on the property owner.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

1. During the July 7, 1994 Adoption Hearing for the Evaluation and Appraisal Report (EAR) there was a lengthy discussion regarding the application of the definition of the word "Density" in the Glossary of the Lee Plan. A request was made by a local land use attorney to amend the definition. The argument supporting his amendment is quoted below:

"Back in 1986 there was some concerns regarding density and development on the beaches, particularly because there were density calculations that apparently were able to include parts of land that were under water; and consequently the definition was amended to exclude water bodies that were not entirely contained within a property from the total acreage that could be used for density calculations. Unfortunately, it wasn't written narrowly enough to only apply to, say, the Gulf of Mexico or those natural navigable water bodies. Consequently, it now applies also to inland parcels where there are parts of lakes, for instance, that are not still entirely within a property, property limits; yet those lakes do play an important role in providing open space, the ability for drainage, things like that."

These opening remarks started a discussion on what the intent of the definition is and how it should be applied. One of the focuses of the debate was natural water bodies verses man-made water bodies. The pre-EAR definition is reproduced below:

DENSITY - *The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing waterbodies which are entirely contained within the residential development. Lands for commercial, office, and industrial uses, existing water bodies which are not entirely contained within the site, and other non-residential uses shall not be included.*

Under this definition, a property with a man-made lake, an excavation area, was allowed to include that area in the density calculation, provided the man-made lake was entirely contained within the property. Should any portion of the lake extend beyond the property line, no portion of the lake was included for density purposes. This was characterized as an unfair practice.

Large natural water bodies are mapped on the Lee Plan Future Land Use Map. Features such as the Gulf of Mexico, the back bays such as Estero Bay, San Carlos Bay, Pine Island Sound, and rivers and creeks such as the Caloosahatchee, the Imperial River, and Telegraph Creek are mapped. There are instances when tracks of land include portions of these features. It is clearly the Board's direction that no density should be allowed for these submerged lands. Other natural water bodies are mapped by the plan as Wetlands. Natural occurring lakes in Lee County happen in depressional soils. Depressional soils are one of the key indicators of a wetland. The county's past effort to map all the wetlands on the Future Land Use Map have included natural water bodies in the Wetlands designation. These areas are limited to a residential density of one dwelling unit per 20 acres. The Lee Plan encourages this density be transferred out of the wetlands onto adjacent uplands, at one dwelling unit per 20 acres. This transfer helps to avoid impacts even at this low density. This transfer is limited by restrictions that allow only half of the bonus density to be achieved through this transfer.

Unlike natural water bodies, man-made lakes are not broken out from the surrounding land use categories on the Future Land Use Map. Therefore, any methodology for determining the population capacity of the Future Land Use Map utilizes these areas for the purpose of calculating density. However, unless a man-made lake is entirely contained on a proposed project, these areas are not allowed to be used for calculating density at the rezoning or development order stage. This creates an inconsistency in the calculation of the Lee Plan population accommodation methodology and places an undue burden on some property owners. This argument has merit. If water bodies are not factored out for the land use map carrying capacity calculation, why should it be factored out when the definition is applied at rezoning or development order time? And why only to property that doesn't contain the feature entirely within its boundaries?

In addition, many developments here in Lee County start without "lakes" and are developed with water amenities formed when fill materials are extracted from one portion of the site and used for fill in other areas. These lakes are considered open space, act as an amenity, and also function for water management needs. The Lee Plan does not reduce density for this type of water body and should not.

B. CONCLUSIONS

The definition of Density should be revised to allow density from man-made water bodies, whether entirely contained within a property or not. Density from these areas has already been accounted for in the planning process and property owners should not be penalized for not owning the entire man-made water body or for developing the water body before proposing residential development.

In no case should the area from natural navigable water bodies be added to the acreage of the upland category. The county should continue to encourage the transfer from these areas, at one dwelling unit per 20 acres, to the adjacent upland properties.

C. STAFF RECOMMENDATION

Staff recommends that the definition of Density contained in the Lee Plan Glossary be revised to allow density from man-made water bodies. See Part I, C.1. of this report for the specific language.

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

DATE OF LPA HEARING: May 6, 1997

A. LOCAL PLANNING AGENCY REVIEW

The LPA had no discussion or questions concerning this amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit this amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by the staff.

C. VOTE:

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|------------------------|---------------|
| CARRON DAY | <u>ABSENT</u> |
| RICHARD DURLING | <u>AYE</u> |
| EARL HAMILTON | <u>ABSENT</u> |
| RONALD INGE | <u>AYE</u> |
| BILL SPIKOWSKI | <u>AYE</u> |
| GREG STUART | <u>AYE</u> |
| MATT UHLE | <u>AYE</u> |

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

DATE OF TRANSMITTAL HEARING: November 5, 1997

A. BOARD REVIEW: One member of the Board took issue with this amendment and stated that this amendment "goes the wrong way." This member stated that "we shouldn't be giving any density credits on man-made open bodies of water." This member made a motion not to transmit the amendment and to direct staff to eliminate the use of man-made open bodies of water to get density credits. The motion died for lack of a second. The Board provided a motion to transmit the amendment with a modification deleting the word navigable:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made water_bodies contained within the residential development. Lands for commercial, office, industrial uses, natural ~~navigable~~ water bodies, and other non-residential uses shall not be included.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

- 1. BOARD ACTION:** The Board voted to transmit this amendment with the modification noted above. The language the Board voted to transmit is as follows:

DENSITY - The number of residential dwelling or housing units per gross acre (du/acre). Densities specified in this plan are gross residential densities. For the purpose of calculating gross residential density, the total acreage of a development includes those lands to be used for residential uses, and includes land within the development proposed to be used for streets and street rights of way, utility rights-of-way, public and private parks, recreation and open space, schools, community centers, and facilities such as police, fire and emergency services, sewage and water, drainage, and existing man-made water_bodies ~~which are entirely~~ contained within the residential development. Lands for commercial, office, ~~and~~ industrial uses, natural, ~~navigable~~ water bodies, and other non-residential uses shall not be included.

- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff and the LPA.

C. VOTE:

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|-----------------------|------------|
| JOHN ALBION | AYE |
| ANDREW COY | AYE |
| RAY JUDAH | NAY |
| JOHN MANNING | AYE |
| DOUG ST. CERNY | AYE |

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: February 5, 1998

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

The DCA had no objections, recommendations, or comments concerning this amendment.

B. STAFF RECOMMENDATION

Adopt the amendment as transmitted.

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

DATE OF ADOPTION HEARING: May 27, 1998

A. BOARD REVIEW: This item was on the consent agenda but was pulled by one commissioner for further discussion. This member of the Board again questioned why the county allows densities off of man-made water bodies. The Planning Director provided a short discussion of the history and reasons behind the amendment. This one member of the Board stated he appreciated the Director's response in terms of clarifying. This member further stated that "If it's the Board's policy to go ahead and allow the density for man-made open water bodies, then I understand the reason for the language modification here to clarify the issue. It's just to me the fundamental concern here is why should we allow density on man-made open bodies of water."

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board voted to adopt this amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff.

C. VOTE:

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|-----------------------|---------------|
| JOHN ALBION | AYE |
| ANDREW COY | AYE |
| RAY JUDAH | NAY |
| JOHN MANNING | AYE |
| DOUG ST. CERNY | ABSENT |