

**MINUTES REPORT  
LOCAL PLANNING AGENCY  
May 24, 2010**

**MEMBERS PRESENT:**

Noel Address  
Cindy Butler  
Carie Call

Wayne Daltry (Chair)  
Jim Green (Vice Chair)  
Mitch Hutchcraft  
Ron Inge

**STAFF PRESENT:**

Donna Marie Collins, Chief Asst. Cty. Atty.  
Brandon Dunn, Development Services  
John Fredyma, Asst. Cty. Atty.  
Dave Loveland, DOT

Janet Miller, Recording Secretary  
Matt Noble, Planning  
Paul O'Connor, Planning Director  
Dawn Perry-Lehnert, Asst. Cty. Atty.

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

Mr. Daltry 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. Collins, Chief 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** - None

**Agenda Item 4 – Approval of Minutes – April 26, 2010**

Mr. Address referred to the third line in the third paragraph on Page 3 of 6, clarified that it should read, “1 unit per **10** acres.”

Mr. Hutchcraft referred to the first line of the 8<sup>th</sup> paragraph on Page 3 of 6 and noted that when he was discussing the diminishing supply of buildable land he was specifically talking about the property within the University Community.

Mr. Daltry clarified that he did not vote against Agenda Item 5 – Chapter 12 of the LDC (Resource Extraction). Mr. Daltry stated he would amend the way he states things in accordance with the Roberts Rules to make it more clear in the future. The vote should be 6-0.

**Mr. Address made a motion to approve the April 26, 2010 meeting minutes as amended, seconded by Mr. Inge. There being no further discussion, the motion passed 7-0.**

### **Agenda Item 5 – Chapter 2 of the LDC (Unauthorized Communications)**

Ms. Perry-Lehnert stated this amendment was specific with regards to unauthorized communications. The main intent of the amendment is to make it clear that the public are not authorized to speak to the Board of County Commissioners on any code enforcement case where the abatement is through a zoning action that will come before the Board of County Commissioners. In addition staff clarified some language in the document by eliminating redundancy that was in both Chapters 2 and 34. Other than these changes, the regulations remain largely unchanged.

Mr. Andress clarified that this amendment allows the public to speak to the Board of County Commissioners on any issue that is not coming before them for a vote. The specific concern was when there were items only going before the Hearing Examiner for a final determination. Previously, the public could not discuss these types of cases with the Board of County Commissioners, but now they will be allowed to.

Due to a question by the LPA, Ms. Lehnert clarified that a plan amendment is a legislative act, so the public is allowed to talk to the Board of County Commissioners on legislative acts.

Mr. Daltry opened this item to the public. No public input was received.

**Mr. Andress made a motion to transmit this ordinance with a finding of consistency with the Lee Plan, seconded by Mr. Inge. The motion passed 7-0.**

### **Agenda Item 6 – Chapter 32 of the LDC (Transfer of Development Rights)**

Ms. Lehnert stated this ordinance is an outgrowth of the DRGR amendments to the comprehensive plan. It establishes a new Chapter 32 which relates to Compact Communities and it allows you to create a Compact Community using TDR. She stated that Bill Spikowski, Consultant for this ordinance, would be providing an overview.

Mr. Inge stated he had two clients that own property in the DRGR area. One of the properties is shown on Map 14 and is not subject to this ordinance by definition of the draft. The second client has three small parcels that are in the DRGR area that could theoretically be considered sending areas at some point in time. Out of caution, Mr. Inge stated he would not be participating in the discussion and would abstain from voting. He filed the appropriate form with the clerk and the County Attorney's office.

Ms. Butler stated it had been brought to her attention this morning that her husband, an attorney for Fowler and White, might have clients with property in this particular area. Therefore, she would also abstain from voting.

Mr. Bill Spikowski from Spikowski Planning Associates gave an overview of the proposed code changes. He noted that the Department of Community Affairs (DCA) had issued a Notice of Noncompliance because they want more detail in the Lee Plan on how the TDR incentives will work. Mr. Spikowski hoped to have this issue worked out with DCA by next month. He requested the LPA find this ordinance consistent with the Lee Plan.

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

Ms. Nicole Ryan, representing the Conservancy of SW FL, stated the Conservancy supports these amendments as proposed. She did have some suggestions to improve the ordinance. She referred to Section 32-305 (TDR Credit Sending Area Ratios) and noted that, although there were disincentives built in to help prevent someone from clearing their sending lands and then asking to receive credits for them, there is no outright prohibition. The Conservancy requested Lee County have something similar to what Collier County has in their TDR program that indicates that if you have cleared your sending lands there is a 20 year prohibition against using those lands for TDRs. She referred to Section 32-307 (Easements Required) and noted it had been drafted so that Lee County could be, but does not have to be, the grantee. Although other grantees would be appropriate also, the Conservancy preferred to have Lee County as one of the grantees of the easements. Ms. Ryan stated that Lee County should oversee at least a portion of these easements. Lastly, she referred to the maps on Pages 32-46 through 32-49 and noted that the rural communities were still on these illustrated maps. Since they were not put forward at adoption, the maps should be corrected.

Mr. Steve Hartsell, on behalf of the Bennett Trust, which is the owner of the Fountains property, referred to Section 32-405(b)(1) on Page 47 that deals with one of the conceptual regulating plans. Although it was one of the initial plans proposed, it did not include an additional 25-30 acres along the northwest portion of Daniels Parkway that was also included in the Mixed Use Community Plan that was sent forward. He felt those acres should be included in this Conceptual Regulating Plan. He referred to Section 32-103(1) and noted there was a reference on the first page to Administrative Approvals in southeast Lee County. However, the Fountains has a dilemma because approximately 133 acres of Central urban land, that is part of the Mixed Use Community, falls within the Lehigh Acres Planning Community. He requested additional language that would reflect approvals in southeast Lee County and the Lehigh area where the Mixed Use Community is part of what is being approved. He referred to Section 32-403(b)(2) on Page 45. This section reflects that 75 square feet of commercial is allowed with each by right unit that is on a parcel in the DRGR area if it is used as part of the mixed use. However, he felt it should be stated affirmatively in a separate subsection, such as C. He referred to Section 32-504(a)(1) on Page 51 and noted this section allows the Conceptual Regulating plans being adopted to be changed through an amendment to the Land Development Code. He suggested that in addition to this, they should be permitted to be changed through the rezoning process so that an applicant is not penalized by having to first go through a Land Development Code amendment and then a rezoning process.

Mr. Bill Spikowski stated that all of Mr. Hartsell's comments are in line with the intent of this ordinance and that he would attempt to add language to make it clearer. He referred to Ms. Ryan's comments on the prohibition of clearing and stated the County does something different than Collier County. This ordinance will give someone a 2 for 1 density bonus if they preserve native vegetation. If they clear it, they give away half of the value of their TDR credits.

Ms. Collins referred to the comment on the County being one of the additional grantees and stated that it would entail obligations to maintain and potentially restore lands by removing exotics. Since the County now has limited resources, she felt it should be a decision by the Board of County Commissioners on whether they want to take on that responsibility. She did ask that staff try to quantify what it would cost the County to take on that responsibility so the Board of County Commissioners would have an idea of the financial end of it.

General questions and answers ensued between the LPA and Mr. Spikowski.

Mr. Hutchcraft expressed concern with moving forward with this ordinance when DCA has found the TDR component not in compliance. It would mean moving forward with implementing language for a policy that may get changed by DCA in the end. He felt there should be a definitive answer on what is going to be provided to landowners before moving forward. He also expressed concern for long term agricultural land operations. He noted that one or two landowners could get fully implemented by achieving all of their densities, which could affect long term agricultural land owners because the cap might be reached due to other landowners taking advantage of this first. This could mean a taking of property rights.

Mr. Andress stated there still seemed to be inadequate transportation corridors.

Mr. Spikowski noted this would get resolved through a Comprehensive Plan Amendment for a multi-modal transportation district that would cover five Mixed Use Communities or the four that are on Route 82. This would need to be signed off by DCA and FDOT, which will most likely take a year to accomplish.

Further discussion ensued on whether: 1) other communities have used these regulations and, if so, were they successful; and, 2) recommending this ordinance be subject to the settlement of the lawsuit.

**Ms. Call made a motion to find these provisions consistent with the Lee Plan that was passed on March 3, 2010 with the friendly amendments proposed during this hearing, seconded by Mr. Andress.**

Mr. Green asked if Ms. Call would consider adding language to the motion such as "subject to the settlement of the lawsuit."

**Ms. Call and Mr. Andress agreed to the amendments.**

Mr. Hutchcraft stated he would be voting against this amendment because the motion was to find it consistent with the transmittal that was made on March 3, 2010. Mr. Hutchcraft noted he voted against that transmittal because he did not feel it was consistent with the Lee Plan, specifically the Transfer of Development Rights component.

**Ms. Collins clarified that the motion was to find the proposed ordinance consistent with the recently adopted Lee Plan on March 3, 2010 including all friendly amendments proposed during this hearing. Also, it will be subject to the outcome of the challenge.**

**The motion was called to question. Ms. Call, Mr. Daltry, Mr. Address, and Mr. Green were in favor. Mr. Hutchcraft was opposed. Mr. Inge and Ms. Butler abstained. The motion passed 4-1.**

### **Agenda Item 7 – Chapter 34 of the LDC (Community Gardens)**

Mr. Michael Jacob stated the Board of County Commissioners requested that staff come forward with an amendment that would allow the creation of community gardens in residential districts.

Mr. Address expressed concern with the 2 acre size limitation. He felt it should be changed to a maximum of 5 acres. He did not feel 2 acres was sufficient if you have a large number of members in the community that want to have a row garden.

Ms. Richardson stated staff wanted to keep the number to 2 acres in size because once you get larger than that you are becoming an agricultural use. These community gardens are meant for small communities, not large garden areas. If someone wants a large garden area, they need to go to a large agricultural district that allows that.

Discussion ensued regarding temporary use permits not being available during the months of June, July, and August (Page 3 of 10 - Temporary Use Permits).

Mr. Daltry opened this item to the public. No public input was received.

**Ms. Butler stated that as a member of the Periwinkle Garden Club, they are in support of the ordinance. Ms. Butler made a motion to approve staff recommendation.**

**Mr. Green seconded the motion for discussion.** He asked if Ms. Butler would agree to increase the acreage to 5 acres and exclude the prohibition on the July, July, and August months.

Ms. Richardson stated staff preferred to leave the size to two acres, but were not opposed to having the events all year long. However, they want the events to be a total of 8 for the year.

**Ms. Butler agreed to compromise on the size by recommending it be increased to 3 acres, but she supported staff in terms of changing the number of events.**

**Mr. Green agreed to the amendment.**

Mr. Daltry clarified that the motion was to find Chapter 34 of the Land Development Code in compliance with the Comprehensive Plan and to transmit to the Board of County Commissioners with two changes: 1) eliminate the blackout period on events; 2) change the minimum size from 2 acres to 3 acres.

**The motion was called to question. The motion passed 7-0.**

**CPA2010-00003 – Gulf Shore Investments**

Mr. Dunn gave an overview of his staff report for this Small Scale Amendment and noted staff was recommending adoption.

Ms. Butler noted she looked at the property and did not see any signage.

Mr. Dunn stated signs were posted on Thursday, which was late.

Mr. O'Connor stated the Administrative Code specifically states that if the signs are not posted for the 14 days, it is still not a prohibition against going ahead with the amendment.

**Mr. Inge made a motion to recommend the Board of County Commissioners adopt CPA2010-00003, Gulf Shore Investments, amending Map 1 for a 0.9 acre parcel from Suburban to General Commercial Interchange, seconded by Mr. Address. There being no further discussion, the motion passed 7-0.**

The LPA took a 15 minute recess and reconvened at 10:05 a.m.

**Agenda Item 9 – Lee County Comprehensive Plan (Lee Plan) 2009/2010 Regular Amendment Cycle**

**A. CPA2009-00001 – Alico West**

Mr. Dunn reviewed the staff report and staff's recommendation.

Mr. Noble reviewed the Errata Sheet that was distributed at this morning's proceedings.

Mr. Charles Basinait (Henderson Franklin), Mr. Robert Hutcherson (Robert Hutcherson Planning Services, LLC), Mr. Kirk Martin (CDM), Mr. Ron Talone (David Plummer & Associates), and Mr. Joe Shephard (Florida Gulf Coast University) gave a PowerPoint presentation. The applicant is Alico Land Development, Inc.

Mr. Daltry opened this item for public comment. The following individuals spoke:

Mr. Jack Meeker asked the LPA to reject this proposal as he did not wish to see the DRGR area get "chipped away." He also did not want to see the owner of this property get rewarded when they were not a good steward of the property. He also did not feel the traffic situation could be

resolved with 951 since it may never be built due to lack of funds. There is also a lack of funds to expand I75 to 10 or 12 lanes.

Ms. Nicole Ryan, representing the Conservancy of S.W. Florida, stated the Conservancy was opposed to this amendment and recommended the LPA not transmit it at this time. The main issues of concern are: 1) Other land owners activity participated in the DRGR review study and planning process, but Alico took a different avenue and decided to file an application for a Comprehensive Plan amendment. The intent of the DRGR amendments was to avoid “piece meal chipping away” of the lands through individual comprehensive plan amendments; 2) The intent of the University Community land use designation is that 2,604 acres will primarily be University related. However, there is evidence of misuse when looking at projects such as Miromar Lakes and the Gulf Coast Town Center; and, 3) The University Community should be reviewed within the larger context of how the removal of land from the DRGR is going to benefit Lee County and the University. A possible solution would be to have this amendment included in the EAR process.

The public portion closed.

Lengthy discussion ensued as to the pros and cons to this proposal.

The majority of the LPA wanted this item to be continued to give further review of the following:

1. **Parking** – 20 acres is not sufficient for the 1.5 million square feet of commercial and 1950 units.
2. **Building Size** - The building size is not indicated, therefore, a definitive size needs to be determined.
3. **Workforce Housing** – There needs to be a workforce housing element for teachers and support people at the University, and all the stores and commercial areas that are going to be there.
4. **Balance** – Discussion should take place to help the County acquire lands that are being lost in terms of the DRGR area.
5. **Finding of Fact** – Why did staff change their recommendation to non-transmittal when they originally recommended transmittal.
6. **Planning Process** – Why did the planning process not result in the outcomes expected? The University should have a role in the review process. The developer should have to provide specifics on the number of units and square feet.

**Mr. Address made a motion to continue this item to June 7, 2010, at 8:30 a.m., at the First Floor Conference Room at the Community Development building, seconded by Mr. Green. The motion was called.**

**Ms. Butler, Ms. Call, Mr. Daltry, Mr. Address, and Mr. Green were in favor. Mr. Inge and Mr. Hutchcraft were opposed. The motion passed 5-2.**

Mr. Inge and Mr. Hutchcraft were opposed for the following reasons:

1. This proposal is a dramatic improvement over what currently exists on the site, which is a significant benefit to the public and the University. Other benefits are that there is a dedication of land and restoration of property that would not otherwise be required.
2. Concurrency can be a self defeating policy because it says that you cannot develop more because it will generate a demand for mass transit. However, in order for mass transit to be meaningful, you need density and intensity of use.
3. This is the right location for this type of development as it is in the epicenter of significant future planned infrastructure.
4. Staff states there are no significant impacts to the water resources and that protective policies are included.
5. Economic incentives are needed in order for projects to go forward. It is not up to the LPA to find that economic balance.
6. This is the best option for the property as it would not be favorable to have single family units on large lots or to amend Map 14 by putting the land back into the DRGR.
7. This landowner dedicated this property to the University. Even though the University is not receiving more than 40 acres, it does not mean this is not a viable project to move forward with.
8. Designs of buildings, layouts of buildings, and square footage of buildings belong in the Land Development Code, not the Comprehensive Plan.

The LPA took a one hour lunch break and reconvened at 2:00 p.m.

### **B. CPA2009-00002 - North Olga Community Plan**

Mr. Inge, Mr. Andress, Mr. Daltry, Ms. Call, Mr. Green, Ms. Butler, and Mr. Hutchcraft divulged communications they had with outside parties on this amendment. It was determined that they would forward any e-mails they received to [LPA@leegov.com](mailto:LPA@leegov.com).

Mr. Green stated that several residents of the North Olga area requested Alva, Inc. represent them. Since he was the Secretary and board member of Alva, Inc., he would be participating in the discussion, but abstain from voting. He filed the appropriate Voting Conflict form for the record.

Mr. Hutchcraft stated he would have to leave the meeting at 3:30 p.m.

Mr. Daltry stated that staff did determine the location of the June 7<sup>th</sup> continuation meeting which will be at 8:30 a.m. at **2115 Second Street, Administration Conference Room, First Floor, County Administration building** NOT the Community Development building as earlier stated.

Mr. Dunn reviewed the staff report and recommendations.

General questions and answers ensued between the LPA, staff, Dr. Van Roekel, and Alexis Crespo regarding: 1) The lack of consensus with the residents; 2) the need for a joint meeting between the North Olga and Alva, Inc. groups; 3) the time frame of this amendment (i.e. this cycle or next cycle); 4) what objections there were from the community; and, 5) differences between the two plans.

Richard Pringle, Strayhorn Law Firm, representing the applicant, gave a PowerPoint presentation. An overview was also provided by Dr. Van Roekel, Chairman of the North Olga Community Plan, and Alexis Crespo from En-site.

Due to questions by the LPA, Mr. Pringle clarified that the North Olga Planning Panel had no objections to the proposed alternative language from staff. They also did not oppose the boundary map, which was part of staff's analysis.

The LPA took a break at 3:15 p.m. and reconvened at 3:25 p.m.

Mr. Daltry opened this item for public comment. The following citizens spoke:

<u>Name</u>	<u>Representing</u>	<u>Residency</u>	<u>Position</u>
Debra Van Roekel		North Olga	In Support
Nick Armeda		North Olga	In Support
Mary Povia		Property Owner in North Olga (not a Resident)	In Support
Glenn Cary		North Olga	In Support
Tom Mulling		North Olga	In Support
Mike Greenwell		North Olga	In Support
Cheri Mulling		North Olga	In Support
John Hawkins		Alva	Opposed
Donna Daniels	William & Linda Redfern	North Olga	Opposed
William Fields		North Olga	Opposed
Theresa Fields		North Olga	Opposed
Steven Brodtkin	President/Concerned Citizens of Bayshore	Bayshore	Opposed
John Lovelace		Alva	In Support
Debbie Jackow		Bayshore	Opposed
Michael Stottlemeyer		North Olga	Opposed
Ed Kimble		Fort Myers Shores	Opposed
Janet Tripp	East Lee County Council	Fort Myers Shore	Opposed
Teresa Edwards		Alva	In Support
Tonya Hampton		Alva	In Support
Frank Musco		North Olga	Opposed
Ruby Daniels		Alva	Opposed

Due to a question by Mr. Inge, Ms. Daniels clarified that the portions she was opposed to in the proposed plan is that developments under 100 acres do not seem to be well protected in terms of preserving the rural area. Another issue is that there is weak language in several areas of the plan. For instance, “to encourage” is not strong language.

Three other citizens filled out cards, but did not speak. They are: Dennis Hampton (Alva resident – In Support), Jodi Duncan (North Olga resident – In Support), Denise Houck (Alva resident – Opposed).

Ms. Nicole Ryan, representing the Conservancy of SW FL, stated the Conservancy’s campus is not in the Olga area nor do they own property. However, they have been included in the planning discussions with En-site and Alva, Inc. The Conservancy agrees with staff’s analysis that this project is not best for Lee County and they agree with staff’s conclusions. The Conservancy also questions the appropriateness of the boundary. A fair resolution might be to have the proposed North Olga Plan become part of the Evaluation and Appraisal Report process so that it can be looked at in a whole context and planning can be done in something better than a smaller piece meal fashion.

Mr. Richard Pringle stated that he had to leave for another meeting. He asked that the LPA consider continuing this matter to June 7<sup>th</sup>.

The public portion was closed.

Mr. Andress stated he had not heard anything today that indicated a large difference in the two plans and he did not understand why the two groups could not have a joint meeting. He was in favor of amending the Alva plan to incorporate the needs of some of the North Olga residents rather than have two separate plans.

**Mr. Inge made a motion to continue this item to June 7, 2010, seconded by Mr. Andress. There being no further discussion, the motion passed 5-0. Mr. Green abstained. Mr. Hutchcraft was absent.**

Mr. Daltry asked that the applicant put an overlay over the planning area so that whatever agreements the County has with Babcock will be acknowledged. This will help guide whatever future there is for that part of the North Olga Planning area.

Due to time constraints and some members having to leave, **Mr. Inge made a motion to continue the three remaining items (CPA2009-00008, CPA2008-00018, and the EAR Update Discussion) to the June 7<sup>th</sup> meeting, seconded by Ms. Butler. There being no further discussion, the motion passed 6-0.**

**Mr. Inge made a motion to adjourn, seconded by Ms. Butler. There being no further discussion, the motion passed 6-0.**

The meeting adjourned at 5:00 p.m.