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Regulatory Alert – Lee County Openspace Comprehensive Plan Amendments

In the coming months of May and June, Lee County Planning Staff will be proposing two new amendments to the Lee Plan. These two amendments propose to further regulate the character and location of open space in commercial projects and industrial projects while setting the stage to eventually increase the amount of regulated open space. The two amendments are -- CPA 2000-25 Goal 52 Open Space Standards and CPA 2000-24 Goal 40 Isolated Wetlands.

The Goal 52 Open Space comprehensive plan amendment is based upon the Staff premise that commercial and industrial developments do not have enough open space. The amendment calls for significant new regulatory policies and standards. Key standards include the designation of existing freestanding trees as native open space areas, the “*encouragement*” of placing in the front of non-residential projects regulated open space and existing trees, and to require a review of the Land Development Code as it pertains to minimum non-residential open space standards. It is this last standard that sets the stage to increase the amount of regulatory commercial open space.

The Goal 40 Isolated Wetlands comprehensive plan amendment is aimed at encouraging the incorporation of isolated wetlands into a projects surface water management system. Staff wants to “*encourage*” (i.e., mandate) the preservation of isolated wetlands in front of commercial and industrial projects for visual relief and other purposes. The policy is a direct result of the Fiddlesticks Publix Shopping Center zoning case, where Lee County Staff directed the applicant to set aside hundreds of thousands of dollars of commercial real estate out parcels for visual relief.

The two proposed Lee Plan amendments are based upon many questionable assumptions and reflect ongoing pro-regulation, anti-business governmental trends. The underlying basis of these proposals have been addressed by code reforms supported by the business community, including Roadway Landscaping Buffers and Architectural Design Standards. Furthermore, the Isolated Wetland amendment directly contradicts the widely accepted principal and benefits of preserving large-scale wetland systems and not small, isolated wetlands. By changing the rules so as to insure freestanding trees are regulated and that more native open space and isolated wetlands are set aside in front of commercial and industrial projects, the valuation of these lands will be diminished. In so doing, transactional values and property use will be reduced. Please call the BOCC and tell them *to not transmit these two amendments*. The BOCC needs to hold off on non-urgent Lee Plan amendments and Land Development Code rules that cannot be firmly linked to demonstrable public health, safety and welfare considerations. Finally, a regulatory “time-out” is needed so as to permit the Smart Growth initiative to evaluate continuous Staff initiated regulatory efforts so as to come up with a better rule making process.

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STAFF LANGUAGE

GOAL 52: DEVELOPMENT DESIGN REQUIREMENTS. To require new developments to provide adequate open space for improved aesthetic appearance, visual relief, environmental quality, preservation of existing native trees and plant communities, and the planting of required vegetation.

OBJECTIVE 52.1: Development regulations will continue to require that new residential developments provide sufficient open space to meet the needs of their residents.

OBJECTIVE 52.2: Development regulations will continue to require that new commercial and industrial developments provide sufficient open space for the benefit of their patrons and the general public.

POLICY 52.1.2: The county must continue to review the open space requirements of the Land Development Code to determine if these requirements should be modified in any way to best meet the objectives of open space requirements within new commercial and industrial developments.

OBJECTIVE 52.3: New developments must use innovative open space design to preserve existing native vegetation, provide visual relief, and buffer adjacent uses. This objective and subsequent policies are to be implemented through the zoning process.

POLICY 52.3.1: Any new development must provide half of the required open space as existing native plant communities. Properties with existing native trees without associated native groundcover or understory must provide half of the required open space with areas containing existing native trees. The planting of native shrub species within native tree protection areas is encouraged.

POLICY 52.3.2: Open space areas must be designed with adequate widths to preserve and allow the continued growth and viability of existing native trees.

POLICY 52.3.3: The county encourages new developments to incorporate existing native plant communities and/or native trees along proposed and/or existing rights-of-way.

POLICY 52.3.4: The county encourages new developments to incorporate large, contiguous open space areas in the development design.

POLICY 52.3.5: Proposed planned developments must submit an open space design plan with an assessment of the existing native plant communities and native trees. The open space design plan must delineate the indigenous preserves and/or native trees preservation areas.