



CPA 2004-14

**CONSIDERATION OF REDUCED DENSITY
IN THE COASTAL HIGH HAZARD AREA
BOCC SPONSORED AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**BoCC Public Hearing Document
for the
October 12th Adoption Hearing**

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
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(239) 479-8585*

August 19, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-14**

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Text Amendment

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Map Amendment

<input checked="" type="checkbox"/>	This Document Contains the Following Reviews:
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input checked="" type="checkbox"/>	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
<input type="checkbox"/>	Board of County Commissioners Hearing for Adoption

ORIGINAL STAFF REPORT PREPARATION DATE: March 21, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan's Conservation and Coastal Management element Policy 75.1.4 to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review. This recommendation has been updated to include the LPA recommended language.

Recommended Text Changes:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan.
- A Conservation and Coastal Zone element was contained in the 1984 Lee Plan. The 1984 plan did not include Goal 75 and subsequent policies.
- The State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance.
- The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study. As a result, Goal 75 and subsequent Objectives and Policies were incorporated into the Lee Plan.
- The 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards.
- The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas."
- The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase.
- The assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses.

- At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process.

C. BACKGROUND INFORMATION

1. EXISTING GOAL 75, OBJECTIVE 75.1, AND SUBSEQUENT POLICIES:

GOAL 75: PROTECTION OF LIFE AND PROPERTY IN COASTAL HIGH HAZARD AREAS. *To protect human life and developed property from natural disasters. (See also Goal 80.) (Amended by Ordinance No. 94-30)*

OBJECTIVE 75.1: DEVELOPMENT IN COASTAL HIGH HAZARD AREAS. *Development seaward of the 1991 Coastal Construction Control Line will require applicable State of Florida approval; new development on barrier islands will be limited to densities that meet required evacuation standards; new development requiring seawalls for protection from coastal erosion will not be permitted; and allowable densities for undeveloped areas within coastal high hazard areas will be considered for reduction. (Amended by Ordinance No. 92-35, 93-25, 94-30, 00-22)*

POLICY 75.1.1: *County policy regarding development seaward of the updated 1991 Coastal Construction Control Line will be re-evaluated approximately every five years beginning in 1995 to assess the adequacy of policies and practices developed by the Department of Environmental Protection. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

POLICY 75.1.2: *Rezoning to allow higher densities will not be permitted on barrier and coastal islands if the capacity of critical evacuation routes would thereby be exceeded (see Objective 79.1). (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.3: *Shoreline development in V Zones will be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment, rather than by seawalls or other hardened structures which tend to hasten beach erosion (see also policies under Objective 83.2). Repairs of lawfully constructed, functional, hardened structures as defined in F.S. Chapter 161 may be allowed subject to applicable state and local review and approval. (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.4: *Through the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

2. BACKGROUND DISCUSSION:

At the October 19, 2004 regular Board meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 (consideration of reduced density in the Coastal High Hazard Area) should apply during the rezoning process, and not only through the Lee Plan amendment process. The official meeting minutes contain the following:

DENSITY IN COASTAL HIGH HAZARD AREAS - Commissioner Judah requested appropriate language in the Comprehensive Plan (Comp Plan) to allow the Board to identify proposed increases in density in the coastal high hazard areas and discourage it; noted that the Comp Plan contains language pertaining to amendments to the Comp Plan, not zoning cases; and directed the County Attorney's Office to formulate the appropriate language in an amendment for the Board to consider during the next round of amendments. Discussion ensued concerning the proper committees and departments that would participate in creating this amendment. Commissioner Albion requested an update in two months.

Staff prepared a Board of County Commissioners Agenda Item Summary ("the Bluesheet") for the November 9, 2004 Board meeting date to initiate a Lee Plan amendment to reevaluate this issue. The Bluesheet provided that "Approving this action will allow staff to perform a reevaluation of this policy in the current Lee Plan amendment cycle." The Bluesheet further provided that "The focus of this reevaluation will be the merits of considering lower densities within the coastal high hazard areas during the rezoning process."

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan. In 1984 a Conservation and Coastal Zone element was incorporated into the Lee Plan. This plan did not include Goal 75 and subsequent policies. Subsequent to Lee County adopting the 1984 Lee Plan, the State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance. The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study.

The 1988 Lee County Coastal Study was the result of a collaboration of a consultant team and Lee County staff. The study involved both collection of new data and the compilation of existing data. The study provided a definition and map of the "Coastal Study Area." The study also examined "projected coastal area growth" and "potential buildout" which equated to an increase of 99,384 dwelling units over the 1986 inventory total of 61,410 dwelling units. In addition, the study covered the following aspects of the coastal study area: Economics, Land Use and Growth Management, Ecological Inventory and Analysis, Estuarine Water Quality, Beach and Dune Systems, Hurricane Evacuation and Hazard Mitigation, and Intergovernmental Relations.

Current Policy 75.1.4 originated in a recommendation that was contained in the "Coastal Area Land Use and Growth Management" Chapter of the 1988 Lee County Coastal Study. The stated purpose of this Chapter is reproduced below:

Purpose

The purpose of this chapter is to inventory existing land uses and to analyze the effects of future land uses within the Coastal Study Area, and to recommend goals, objectives, and policies needed to achieve sound coastal land use patterns under the comprehensive plan. According to Florida law, these land use patterns must account for protection of coastal resources from development, and for protection of human life and limitation of public expenditures in areas subject to destruction by natural disasters. The chapter reviews existing land use for each planning district within the Coastal Study Area and discusses projected future land use in each district at two periods: 1) the year 2010 and, 2) buildout -- the future time when the area has been fully developed. It recommends goals, objectives, and policies to balance land development, resource protection, disaster protection, and public expenditures.

The Chapter discusses existing land uses and potential uses allowed by the respective Lee Plan land use categories in the different portions of the study area. The Chapter also notes, by then designated Planning Districts important planning considerations such as hurricane evacuation, storm hazard mitigation, provision of adequate infrastructure and resource protection issues unique to the district. The Chapter provides the following discussion concerning "Land Use and Infrastructure Issues:"

Lee County has a very extensive, highly developed, and complex coastal area. The Coastal Study Area includes some 163 square miles of land, or about a fifth of the land area of the County. Because so much of the County lies within the 100 year flood zone, coastal management issues have a dominant role in overall land use planning and growth management. Despite extensive areas of protected wetlands, the Coastal Study Area includes some 40% of the 1985 tax base of the County; 16% of this tax base is located in the V (Velocity) Zone, the shoreline area most vulnerable to storm hazards. Because such a high proportion of the existing development is subject to coastal flooding, disaster management issues play a large role in land use planning and growth management. Finally, the complex geography of the Coastal Study Area with its barrier and sound coastal islands, its multiple rivers and bays, and its salt and freshwater wetlands, requires a sophisticated planning process that blends land use and environmental management with progressive public policymaking.

Because Lee County is subject to coastal storm and hurricanes, its land use and growth management policies must account for these potential natural disasters. While not a frequent target of hurricanes, the Lee shore has been struck in the past and prudence requires that the possibility of future strikes be considered in land use and coastal management policy. Because of uncertainty about the exact location and force of future hurricanes, plans for mitigating or reducing the negative impacts of such strikes are usually based on two time frames: 1) before the storm, when general mitigation measures may be taken, and 2) after the storm, when the worst is known about specific destruction and plans can be adjusted on the basis of actual damage assessments.

The Chapter then provides a brief discussion concerning "Pre-Storm Hazard Mitigation and Development Management:"

In the face of certain future coastal storms and likely future sea level rise, the dynamic barrier islands and beaches will be unstable platforms for urban development. Different policies are needed for the undeveloped barriers, which should be conserved in their natural state, exempted from public infrastructure investments, and allowed to retreat before wave forces; and for the developed barriers, which require a balance of conservation, beach replenishment, and development management to ensure protection of coastal resources, property, and human life. Similarly, the developed coastal sound islands, while not exposed to the same wave action as the barriers, also require a balance of conservation and development management to avoid overloading the carrying capacity of both ecological and manmade systems (such as evacuation routes).

Mainland areas subject to coastal flooding constitute a large proportion of existing and future development within the County. The shoreline of most of this area is now protected under the Lee Plan through designation of the coastal wetlands as very low density Resource Protection (environmentally critical) Areas. These wetlands must be strictly protected from urban development in the future, and conservation practices extended inland through drainage basin plans that recognize the interconnected nature of coastal natural resource systems. Future land development in all areas subject to coastal flooding must be regulated to ensure that public expenditures are not unduly exposed to storm hazards, that measures are taken to protect people and property, and that natural systems are conserved and enhanced.

Thus the 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards. The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas." The study numbered the recommended Goals and Policies sequentially and the subject of this staff report (Policy 75.1.4) appeared under Goal 2, Protection of Life and Property and was numbered as Policy 2.1.4. This Policy is reproduced below:

Policy 2.1.4: Land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories or assignment of minimum allowable densities where density ranges are permitted, in order to limit the future population exposed to coastal flooding and hurricane damage.

Staff prepared a draft Conservation and Coastal Management Element and presented the draft element at a series of Local Planning Agency (LPA) Public Hearings during 1988. The draft element was numbered in a different fashion than today. The specific policy subject to this amendment was discussed through this process. For example, at the May 19, 1988 LPA Public Hearing, Mr. Matt Uhle addressed the LPA in part stating the following:

The next one I'm concerned about is objective 5.1 which refers to densities within vulnerable A-zone areas being reduced where possible. The A-zones, I'm sure you all know, are almost all the property that we have on the coastward side of U.S. 41 and includes very large areas which are designated as being in urban service areas. I have grave concerns about a policy that says that densities within those areas will be reduced where possible. First of all it seems inconsistent with the whole thrust of the plan, secondly there are no standards in here at all, so if you own property in an A-zone and this policy is adopted you're looking at some sort of vague policy saying, well sometime in the future the government may try to reduce your density but maybe not, who knows.

I have serious problems with that. That's kind of implemented in policy 5.1.4, which is "land use designations of undeveloped areas within the A-zone shall be considered for reduced density categories."

Mr. Mike Roeder also addressed this topic at the same public hearing:

Another point was brought up about the idea of reducing densities in the A-zone where possible. This underlines a conflict that was pointed out in the 1984 plan, which is that when you overlay the urban service categories on the flood hazard zones you get a pretty neat fit and that seems to be an internal inconsistency in the whole plan. In the preface to the 1984 plan they tried to address that and basically talked around the problem without resolving it. This new policy seems to bring it up to the forefront again in saying we'll try and reduce densities because of flooding and at the same time all the other elements of the plan say we want to concentrate population where we have the infrastructure and services. It's a large problem that needs some more attention because the two elements are working at cross purposes.

The staff produced a revised draft element and the draft was discussed at the June 10, 1988 LPA Public Hearing. At this Public Hearing Mr Matt Uhle again addressed this topic:

The second thing that I'm concerned about is that the language about lowering densities in A zones has been watered down to some extent, but it's still there. In objective 5.1, in policy 5.1.5, it still maintains that the A zones include most of the valuable and developable land in Lee County, and that all these policies are going to do is give a lot of people a lot of fears about what's going to happen to their property without creating any real standards about when and if it's going to happen. I really don't think that that language ought to remain in the policy.

In response to a member of the public asking staff to clarify the intent of the proposed policy, Mr. Bill Spikowski provided:

We've included a new introductory sentence that says, "though the Lee Plan amendment process." There was fear at the last meeting that this would be a staff determination or something. We wanted to make it clear that this is through the formal plan amendment process.

In a later response to a question raised by an LPA member, Mr. Spikowski in part provided the following:

...But the intent of the change here is indicating that the plan amendment process is where that should be since there is reference to the lower ends of the density ranges. It implied that when you come in to get your development order under existing zoning, you'd get strong-armed and we don't want that impression to remain.

Staff believes the important point is that it was not staff's intent to apply the proposed policy to existing zoned property. A slightly modified version of this recommended language was adopted (January 31, 1989) into the 1989 Lee Plan. This Policy is reproduced:

Policy 75.1.5: Through the Lee Plan amendment process, land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding and hurricane damage.

The policy language has changed slightly as a result of two amendments. The first changes occurred during the 1993/1994 EAR process. The reference to "A Zone" was amended to "coastal high hazard areas" and the reference to "hurricane damage" was eliminated. The published EAR document carries no explanation for these changes. The second amendment replaced the word "shall" with the word "will."

The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase. Staff recognizes that the assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses. At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process. Staff believes that this makes sense and does not impact properties that already have achieved zoning approvals. Staff believe it is appropriate to consider a rezoning proposal in light of the individual and surrounding properties characteristics. Staff recommends that the Lee Plan be amended as depicted below:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range.

This proposed language separates the issue, allowing consideration during the plan amendment process and during any rezoning process.

B. CONCLUSIONS

The proposed amendment represents a minor adjustment in Board policy. The proposed policy represents sound Board policy to evaluate through the zoning process individual properties circumstances. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

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

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary concerning the amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment. The LPA recommends adding the last sentence from the Staff Report section B. Conclusions to the end of proposed Policy 75.1.5. The LPA recommended language for Policy 75.1.5 is as follows:

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As contained in the Staff Report.

D. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>ABSENT</u>
DEREK BURR	<u>AYE</u>
RONALD INGE	<u>AYE</u>
CARLETON RYFFEL	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>AYE</u>
VACANT	<u></u>

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW: Staff provided a brief overview of the proposed amendment. Staff noted that the proposal is to split the consideration into two distinct policies, one addressing the Lee Plan amendment process, and one addressing the re-zoning process. Staff indicated its support for the Local Planning Agency (LPA) added language, the last sentence in proposed Policy 75.1.5.

One member of the public stated his support for the amendment including the LPA language. This individual provided that the location of a property in the Coastal High Hazard Area should only be one factor "considered" in determining a properties ultimate density, and that the LPA added language achieves this.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board voted to transmit the proposed amendment, as recommended by the staff and local planning agency, to the Florida Department of Community Affairs for their review.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the finding of facts as advanced by the staff report.

C. VOTE:

JOHN ALBION

AYE

TAMMY HALL

AYE

BOB JANES

AYE

RAY JUDAH

AYE

DOUG ST. CERNY

AYE

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

DATE OF ORC REPORT: August 19, 2005

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: October 12, 2005

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

BOB JANES

RAY JUDAH

DOUG ST. CERNY

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- 1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review. This recommendation has been updated to include the LPA recommended language.

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The purpose of this chapter is to inventory existing land uses and to analyze the effects of future land uses within the Coastal Study Area, and to recommend goals, objectives, and policies needed to achieve sound coastal land use patterns under the comprehensive plan. According to Florida law, these land use patterns must account for protection of coastal resources from development, and for protection of human life and limitation of public expenditures in areas subject to destruction by natural disasters. The chapter reviews existing land use for each planning district within the Coastal Study Area and discusses projected future land use in each district at two periods: 1) the year 2010 and, 2) buildout -- the future time when the area has been fully developed. It recommends goals, objectives, and policies to balance land development, resource protection, disaster protection, and public expenditures.

The Chapter discusses existing land uses and potential uses allowed by the respective Lee Plan land use categories in the different portions of the study area. The Chapter also notes, by then designated Planning Districts important planning considerations such as hurricane evacuation, storm hazard mitigation, provision of adequate infrastructure and resource protection issues unique to the district. The Chapter provides the following discussion concerning "Land Use and Infrastructure Issues:"

Lee County has a very extensive, highly developed, and complex coastal area. The Coastal Study Area includes some 163 square miles of land, or about a fifth of the land area of the County. Because so much of the County lies within the 100 year flood zone, coastal management issues have a dominant role in overall land use planning and growth management. Despite extensive areas of protected wetlands, the Coastal Study Area includes some 40% of the 1985 tax base of the County; 16% of this tax base is located in the V (Velocity) Zone, the shoreline area most vulnerable to storm hazards. Because such a high proportion of the existing development is subject to coastal flooding, disaster management issues play a large role in land use planning and growth management. Finally, the complex geography of the Coastal Study Area with its barrier and sound coastal islands, its multiple rivers and bays, and its salt and freshwater wetlands, requires a sophisticated planning process that blends land use and environmental management with progressive public policymaking.

Because Lee County is subject to coastal storm and hurricanes, its land use and growth management policies must account for these potential natural disasters. While not a frequent target of hurricanes, the Lee shore has been struck in the past and prudence requires that the possibility of future strikes be considered in land use and coastal management policy. Because of uncertainty about the exact location and force of future hurricanes, plans for mitigating or reducing the negative impacts of such strikes are usually based on two time frames: 1) before the storm, when general mitigation measures may be taken, and 2) after the storm, when the worst is known about specific destruction and plans can be adjusted on the basis of actual damage assessments.

The Chapter then provides a brief discussion concerning "Pre-Storm Hazard Mitigation and Development Management:"

In the face of certain future coastal storms and likely future sea level rise, the dynamic barrier islands and beaches will be unstable platforms for urban development. Different policies are needed for the undeveloped barriers, which should be conserved in their natural state, exempted from public infrastructure investments, and allowed to retreat before wave forces; and for the developed barriers, which require a balance of conservation, beach replenishment, and development management to ensure protection of coastal resources, property, and human life. Similarly, the developed coastal sound islands, while not exposed to the same wave action as the barriers, also require a balance of conservation and development management to avoid overloading the carrying capacity of both ecological and manmade systems (such as evacuation routes).

Mainland areas subject to coastal flooding constitute a large proportion of existing and future development within the County. The shoreline of most of this area is now protected under the Lee Plan through designation of the coastal wetlands as very low density Resource Protection (environmentally critical) Areas. These wetlands must be strictly protected from urban development in the future, and conservation practices extended inland through drainage basin plans that recognize the interconnected nature of coastal natural resource systems. Future land development in all areas subject to coastal flooding must be regulated to ensure that public expenditures are not unduly exposed to storm hazards, that measures are taken to protect people and property, and that natural systems are conserved and enhanced.

Thus the 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards. The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas." The study numbered the recommended Goals and Policies sequentially and the subject of this staff report (Policy 75.1.4) appeared under Goal 2, Protection of Life and Property and was numbered as Policy 2.1.4. This Policy is reproduced below:

Policy 2.1.4: Land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories or assignment of minimum allowable densities where density ranges are permitted, in order to limit the future population exposed to coastal flooding and hurricane damage.

Staff prepared a draft Conservation and Coastal Management Element and presented the draft element at a series of Local Planning Agency (LPA) Public Hearings during 1988. The draft element was numbered in a different fashion than today. The specific policy subject to this amendment was discussed through this process. For example, at the May 19, 1988 LPA Public Hearing, Mr. Matt Uhle addressed the LPA in part stating the following:

The next one I'm concerned about is objective 5.1 which refers to densities within vulnerable A-zone areas being reduced where possible. The A-zones, I'm sure you all know, are almost all the property that we have on the coastward side of U.S. 41 and includes very large areas which are designated as being in urban service areas. I have grave concerns about a policy that says that densities within those areas will be reduced where possible. First of all it seems inconsistent with the whole thrust of the plan, secondly there are no standards in here at all, so if you own property in an A-zone and this policy is adopted you're looking at some sort of vague policy saying, well sometime in the future the government may try to reduce your density but maybe not, who knows.

I have serious problems with that. That's kind of implemented in policy 5.1.4, which is "land use designations of undeveloped areas within the A-zone shall be considered for reduced density categories."

Mr. Mike Roeder also addressed this topic at the same public hearing:

Another point was brought up about the idea of reducing densities in the A-zone where possible. This underlines a conflict that was pointed out in the 1984 plan, which is that when you overlay the urban service categories on the flood hazard zones you get a pretty neat fit and that seems to be an internal inconsistency in the whole plan. In the preface to the 1984 plan they tried to address that and basically talked around the problem without resolving it. This new policy seems to bring it up to the forefront again in saying we'll try and reduce densities because of flooding and at the same time all the other elements of the plan say we want to concentrate population where we have the infrastructure and services. It's a large problem that needs some more attention because the two elements are working at cross purposes.

The staff produced a revised draft element and the draft was discussed at the June 10, 1988 LPA Public Hearing. At this Public Hearing Mr Matt Uhle again addressed this topic:

The second thing that I'm concerned about is that the language about lowering densities in A zones has been watered down to some extent, but it's still there. In objective 5.1, in policy 5.1.5, it still maintains that the A zones include most of the valuable and developable land in Lee County, and that all these policies are going to do is give a lot of people a lot of fears about what's going to happen to their property without creating any real standards about when and if it's going to happen. I really don't think that that language ought to remain in the policy.

In response to a member of the public asking staff to clarify the intent of the proposed policy, Mr. Bill Spikowski provided:

We've included a new introductory sentence that says, "though the Lee Plan amendment process." There was fear at the last meeting that this would be a staff determination or something. We wanted to make it clear that this is through the formal plan amendment process.

In a later response to a question raised by an LPA member, Mr. Spikowski in part provided the following:

...But the intent of the change here is indicating that the plan amendment process is where that should be since there is reference to the lower ends of the density ranges. It implied that when you come in to get your development order under existing zoning, you'd get strong-armed and we don't want that impression to remain.

Staff believes the important point is that it was not staff's intent to apply the proposed policy to existing zoned property. A slightly modified version of this recommended language was adopted (January 31, 1989) into the 1989 Lee Plan. This Policy is reproduced:

Policy 75.1.5: *Through the Lee Plan amendment process, land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding and hurricane damage.*

The policy language has changed slightly as a result of two amendments. The first changes occurred during the 1993/1994 EAR process. The reference to "A Zone" was amended to "coastal high hazard areas" and the reference to "hurricane damage" was eliminated. The published EAR document carries no explanation for these changes. The second amendment replaced the word "shall" with the word "will."

The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase. Staff recognizes that the assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses. At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process. Staff believes that this makes sense and does not impact properties that already have achieved zoning approvals. Staff believe it is appropriate to consider a rezoning proposal in light of the individual and surrounding properties characteristics. Staff recommends that the Lee Plan be amended as depicted below:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range.

This proposed language separates the issue, allowing consideration during the plan amendment process and during any rezoning process.

B. CONCLUSIONS

The proposed amendment represents a minor adjustment in Board policy. The proposed policy represents sound Board policy to evaluate through the zoning process individual properties circumstances. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

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

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary concerning the amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment. The LPA recommends adding the last sentence from the Staff Report section B. Conclusions to the end of proposed Policy 75.1.5. The LPA recommended language for Policy 75.1.5 is as follows:

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As contained in the Staff Report.

D. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>ABSENT</u>
DEREK BURR	<u>AYE</u>
RONALD INGE	<u>AYE</u>
CARLETON RYFFEL	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>AYE</u>
VACANT	<u></u>

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

DATE OF TRANSMITTAL HEARING: June 1, 2005

A. BOARD REVIEW: Staff provided a brief overview of the proposed amendment. Staff noted that the proposal is to split the consideration into two distinct policies, one addressing the Lee Plan amendment process, and one addressing the re-zoning process. Staff indicated its support for the Local Planning Agency (LPA) added language, the last sentence in proposed Policy 75.1.5.

One member of the public stated his support for the amendment including the LPA language. This individual provided that the location of a property in the Coastal High Hazard Area should only be one factor "considered" in determining a properties ultimate density, and that the LPA added language achieves this.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

- 1. BOARD ACTION:** The Board voted to transmit the proposed amendment, as recommended by the staff and local planning agency, to the Florida Department of Community Affairs for their review.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the finding of facts as advanced by the staff report.

C. VOTE:

JOHN ALBION	<u>AYE</u>
TAMMY HALL	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

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

DATE OF ORC REPORT:

- A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**
- B. STAFF RESPONSE**
- C. STAFF RECOMMENDATION**

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

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

BOB JANES

RAY JUDAH

DOUG ST. CERNY

CPA 2004-14
CONSIDERATION OF REDUCED DENSITY
IN THE COASTAL HIGH HAZARD AREA
BOCC SPONSORED AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**BoCC Public Hearing Document
for the
June 1st, 2005 Public Hearing**

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585*

May 24, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-14**

☒

Text Amendment

☐

Map Amendment

<input checked="" type="checkbox"/>	This Document Contains the Following Reviews:
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input type="checkbox"/>	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
<input type="checkbox"/>	Board of County Commissioners Hearing for Adoption

ORIGINAL STAFF REPORT PREPARATION DATE: March 21, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan's Conservation and Coastal Management element Policy 75.1.4 to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review. This recommendation has been updated to include the LPA recommended language.

Recommended Text Changes:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan.
- A Conservation and Coastal Zone element was contained in the 1984 Lee Plan. The 1984 plan did not include Goal 75 and subsequent policies.
- The State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance.
- The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study. As a result, Goal 75 and subsequent Objectives and Policies were incorporated into the Lee Plan.
- The 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards.
- The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas."
- The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase.
- The assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses.

- At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process.

C. BACKGROUND INFORMATION

1. EXISTING GOAL 75, OBJECTIVE 75.1, AND SUBSEQUENT POLICIES:

GOAL 75: PROTECTION OF LIFE AND PROPERTY IN COASTAL HIGH HAZARD AREAS. *To protect human life and developed property from natural disasters. (See also Goal 80.) (Amended by Ordinance No. 94-30)*

OBJECTIVE 75.1: DEVELOPMENT IN COASTAL HIGH HAZARD AREAS. *Development seaward of the 1991 Coastal Construction Control Line will require applicable State of Florida approval; new development on barrier islands will be limited to densities that meet required evacuation standards; new development requiring seawalls for protection from coastal erosion will not be permitted; and allowable densities for undeveloped areas within coastal high hazard areas will be considered for reduction. (Amended by Ordinance No. 92-35, 93-25, 94-30, 00-22)*

POLICY 75.1.1: *County policy regarding development seaward of the updated 1991 Coastal Construction Control Line will be re-evaluated approximately every five years beginning in 1995 to assess the adequacy of policies and practices developed by the Department of Environmental Protection. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

POLICY 75.1.2: *Rezoning to allow higher densities will not be permitted on barrier and coastal islands if the capacity of critical evacuation routes would thereby be exceeded (see Objective 79.1). (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.3: *Shoreline development in V Zones will be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment, rather than by seawalls or other hardened structures which tend to hasten beach erosion (see also policies under Objective 83.2). Repairs of lawfully constructed, functional, hardened structures as defined in F.S. Chapter 161 may be allowed subject to applicable state and local review and approval. (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.4: *Through the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

2. BACKGROUND DISCUSSION:

At the October 19, 2004 regular Board meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 (consideration of reduced density in the Coastal High Hazard Area) should apply during the rezoning process, and not only through the Lee Plan amendment process. The official meeting minutes contain the following:

DENSITY IN COASTAL HIGH HAZARD AREAS - Commissioner Judah requested appropriate language in the Comprehensive Plan (Comp Plan) to allow the Board to identify proposed increases in density in the coastal high hazard areas and discourage it; noted that the Comp Plan contains language pertaining to amendments to the Comp Plan, not zoning cases; and directed the County Attorney's Office to formulate the appropriate language in an amendment for the Board to consider during the next round of amendments. Discussion ensued concerning the proper committees and departments that would participate in creating this amendment. Commissioner Albion requested an update in two months.

Staff prepared a Board of County Commissioners Agenda Item Summary ("the Bluesheet") for the November 9, 2004 Board meeting date to initiate a Lee Plan amendment to reevaluate this issue. The Bluesheet provided that "Approving this action will allow staff to perform a reevaluation of this policy in the current Lee Plan amendment cycle." The Bluesheet further provided that "The focus of this reevaluation will be the merits of considering lower densities within the coastal high hazard areas during the rezoning process."

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan. In 1984 a Conservation and Coastal Zone element was incorporated into the Lee Plan. This plan did not include Goal 75 and subsequent policies. Subsequent to Lee County adopting the 1984 Lee Plan, the State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance. The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study.

The 1988 Lee County Coastal Study was the result of a collaboration of a consultant team and Lee County staff. The study involved both collection of new data and the compilation of existing data. The study provided a definition and map of the "Coastal Study Area." The study also examined "projected coastal area growth" and "potential buildout" which equated to an increase of 99,384 dwelling units over the 1986 inventory total of 61,410 dwelling units. In addition, the study covered the following aspects of the coastal study area: Economics, Land Use and Growth Management, Ecological Inventory and Analysis, Estuarine Water Quality, Beach and Dune Systems, Hurricane Evacuation and Hazard Mitigation, and Intergovernmental Relations.

Current Policy 75.1.4 originated in a recommendation that was contained in the "Coastal Area Land Use and Growth Management" Chapter of the 1988 Lee County Coastal Study. The stated purpose of this Chapter is reproduced below:

Purpose

The purpose of this chapter is to inventory existing land uses and to analyze the effects of future land uses within the Coastal Study Area, and to recommend goals, objectives, and policies needed to achieve sound coastal land use patterns under the comprehensive plan. According to Florida law, these land use patterns must account for protection of coastal resources from development, and for protection of human life and limitation of public expenditures in areas subject to destruction by natural disasters. The chapter reviews existing land use for each planning district within the Coastal Study Area and discusses projected future land use in each district at two periods: 1) the year 2010 and, 2) buildout -- the future time when the area has been fully developed. It recommends goals, objectives, and policies to balance land development, resource protection, disaster protection, and public expenditures.

The Chapter discusses existing land uses and potential uses allowed by the respective Lee Plan land use categories in the different portions of the study area. The Chapter also notes, by then designated Planning Districts important planning considerations such as hurricane evacuation, storm hazard mitigation, provision of adequate infrastructure and resource protection issues unique to the district. The Chapter provides the following discussion concerning "Land Use and Infrastructure Issues:"

Lee County has a very extensive, highly developed, and complex coastal area. The Coastal Study Area includes some 163 square miles of land, or about a fifth of the land area of the County. Because so much of the County lies within the 100 year flood zone, coastal management issues have a dominant role in overall land use planning and growth management. Despite extensive areas of protected wetlands, the Coastal Study Area includes some 40% of the 1985 tax base of the County; 16% of this tax base is located in the V (Velocity) Zone, the shoreline area most vulnerable to storm hazards. Because such a high proportion of the existing development is subject to coastal flooding, disaster management issues play a large role in land use planning and growth management. Finally, the complex geography of the Coastal Study Area with its barrier and sound coastal islands, its multiple rivers and bays, and its salt and freshwater wetlands, requires a sophisticated planning process that blends land use and environmental management with progressive public policymaking.

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In response to a member of the public asking staff to clarify the intent of the proposed policy, Mr. Bill Spikowski provided:

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Policy 75.1.5: *Through the Lee Plan amendment process, land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding and hurricane damage.*

The policy language has changed slightly as a result of two amendments. The first changes occurred during the 1993/1994 EAR process. The reference to "A Zone" was amended to "coastal high hazard areas" and the reference to "hurricane damage" was eliminated. The published EAR document carries no explanation for these changes. The second amendment replaced the word "shall" with the word "will."

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POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

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This proposed language separates the issue, allowing consideration during the plan amendment process and during any rezoning process.

B. CONCLUSIONS

The proposed amendment represents a minor adjustment in Board policy. The proposed policy represents sound Board policy to evaluate through the zoning process individual properties circumstances. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

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

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary concerning the amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit the proposed amendment. The LPA recommends adding the last sentence from the Staff Report section B. Conclusions to the end of proposed Policy 75.1.5. The LPA recommended language for Policy 75.1.5 is as follows:

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** As contained in the Staff Report.

D. VOTE:

NOEL ANDRESS	<u>AYE</u>
MATT BIXLER	<u>ABSENT</u>
DEREK BURR	<u>AYE</u>
RONALD INGE	<u>AYE</u>
CARLETON RYFFEL	<u>ABSENT</u>
RAYMOND SCHUMANN	<u>AYE</u>
VACANT	<u></u>

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

DATE OF TRANSMITTAL HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

TAMMY HALL

BOB JANES

RAY JUDAH

DOUG ST. CERNY

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

DATE OF ORC REPORT:

- A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**
- B. STAFF RESPONSE**
- C. STAFF RECOMMENDATION**

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

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

BOB JANES

RAY JUDAH

DOUG ST. CERNY

CPA 2004-14
CONSIDERATION OF REDUCED DENSITY
IN THE COASTAL HIGH HAZARD AREA
BOCC SPONSORED AMENDMENT
TO THE

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Publically Initiated Application
and Lee County Staff Analysis**

**LPA Public Hearing Document
for the
March 28th, 2005 Public Hearing**

***Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(239) 479-8585***

March 21, 2005

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2004-13**

☒

Text Amendment

☐

Map Amendment

<input checked="" type="checkbox"/>	This Document Contains the Following Reviews:
<input checked="" type="checkbox"/>	Staff Review
<input type="checkbox"/>	Local Planning Agency Review and Recommendation
<input type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input type="checkbox"/>	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
<input type="checkbox"/>	Board of County Commissioners Hearing for Adoption

ORIGINAL STAFF REPORT PREPARATION DATE: March 21, 2005

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

Lee County Board of County Commissioners, represented by the Lee County Division of Planning.

2. REQUEST:

Amend the Lee Plan's Conservation and Coastal Management element Policy 75.1.4 to consider limiting the future population exposed to coastal flooding while considering applications for rezoning in the Coastal High Hazard Area.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** Planning staff recommends that the Board of County Commissioners transmit the proposed Lee Plan amendment to the Florida Department of Community Affairs for their review.

Recommended Text Changes:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density

categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan.
- A Conservation and Coastal Zone element was contained in the 1984 Lee Plan. The 1984 plan did not include Goal 75 and subsequent policies.
- The State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance.
- The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study. As a result, Goal 75 and subsequent Objectives and Policies were incorporated into the Lee Plan.
- The 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards.
- The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas."
- The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase.
- The assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses.
- At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process.

C. BACKGROUND INFORMATION

1. EXISTING GOAL 75, OBJECTIVE 75.1, AND SUBSEQUENT POLICIES:

GOAL 75: PROTECTION OF LIFE AND PROPERTY IN COASTAL HIGH HAZARD AREAS. *To protect human life and developed property from natural disasters. (See also Goal 80.) (Amended by Ordinance No. 94-30)*

OBJECTIVE 75.1: DEVELOPMENT IN COASTAL HIGH HAZARD AREAS. *Development seaward of the 1991 Coastal Construction Control Line will require applicable State of Florida approval; new development on barrier islands will be limited to densities that meet required evacuation standards; new development requiring seawalls for protection from coastal erosion will not be permitted; and allowable densities for undeveloped areas within coastal high hazard areas will be considered for reduction. (Amended by Ordinance No. 92-35, 93-25, 94-30, 00-22)*

POLICY 75.1.1: *County policy regarding development seaward of the updated 1991 Coastal Construction Control Line will be re-evaluated approximately every five years beginning in 1995 to assess the adequacy of policies and practices developed by the Department of Environmental Protection. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

POLICY 75.1.2: *Rezoning to allow higher densities will not be permitted on barrier and coastal islands if the capacity of critical evacuation routes would thereby be exceeded (see Objective 79.1). (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.3: *Shoreline development in V Zones will be protected from coastal erosion, wave action, and storms by vegetation, setbacks, and/or beach renourishment, rather than by seawalls or other hardened structures which tend to hasten beach erosion (see also policies under Objective 83.2). Repairs of lawfully constructed, functional, hardened structures as defined in F.S. Chapter 161 may be allowed subject to applicable state and local review and approval. (Amended by Ordinance No. 92-35, 00-22)*

POLICY 75.1.4: *Through the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding. (Amended by Ordinance No. 92-35, 94-30, 00-22)*

2. BACKGROUND DISCUSSION:

At the October 19, 2004 regular Board meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 (consideration of reduced density in the Coastal High Hazard Area) should apply during the rezoning process, and not only through the Lee Plan amendment process. The official meeting minutes contain the following:

DENSITY IN COASTAL HIGH HAZARD AREAS - *Commissioner Judah requested appropriate language in the Comprehensive Plan (Comp Plan) to allow the Board to identify proposed increases in density in the coastal high hazard areas and discourage it; noted that the Comp Plan contains language pertaining to amendments to the Comp Plan, not zoning cases; and directed the County Attorney's Office to formulate the appropriate*

language in an amendment for the Board to consider during the next round of amendments. Discussion ensued concerning the proper committees and departments that would participate in creating this amendment. Commissioner Albion requested an update in two months.

Staff prepared a Board of County Commissioners Agenda Item Summary ("the Bluesheet") for the November 9, 2004 Board meeting date to initiate a Lee Plan amendment to reevaluate this issue. The Bluesheet provided that "Approving this action will allow staff to perform a reevaluation of this policy in the current Lee Plan amendment cycle." The Bluesheet further provided that "The focus of this reevaluation will be the merits of considering lower densities within the coastal high hazard areas during the rezoning process."

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Goal 75, and notably Policy 75.1.4, are contained within the existing Conservation and Coastal Management element of the Lee Plan. In 1984 a Conservation and Coastal Zone element was incorporated into the Lee Plan. This plan did not include Goal 75 and subsequent policies. Subsequent to Lee County adopting the 1984 Lee Plan, the State of Florida adopted the 1985 Local Government Comprehensive Planning and Land Development Regulation Act and the 1986 Department of Community Affairs Minimum Criteria for Review of Local Government Comprehensive Plans and Determination of Compliance. The 1984 Conservation and Coastal Zone element was substantially revised and slightly renamed to meet these new requirements as a result of the 1988 Lee County Coastal Study.

The 1988 Lee County Coastal Study was the result of a collaboration of a consultant team and Lee County staff. The study involved both collection of new data and the compilation of existing data. The study provided a definition and map of the "Coastal Study Area." The study also examined "projected coastal area growth" and "potential buildout" which equated to an increase of 99,384 dwelling units over the 1986 inventory total of 61,410 dwelling units. In addition, the study covered the following aspects of the coastal study area: Economics, Land Use and Growth Management, Ecological Inventory and Analysis, Estuarine Water Quality, Beach and Dune Systems, Hurricane Evacuation and Hazard Mitigation, and Intergovernmental Relations.

Current Policy 75.1.4 originated in a recommendation that was contained in the "Coastal Area Land Use and Growth Management" Chapter of the 1988 Lee County Coastal Study. The stated purpose of this Chapter is reproduced below:

Purpose

The purpose of this chapter is to inventory existing land uses and to analyze the effects of future land uses within the Coastal Study Area, and to recommend goals, objectives, and policies needed to achieve sound coastal land use patterns under the comprehensive plan. According to Florida law, these land use patterns must account for protection of coastal resources from development, and for protection of human life and limitation of public expenditures in areas subject to destruction by natural disasters. The chapter reviews existing land use for each planning district within the Coastal Study Area and discusses projected future land use in each district at two periods: 1) the year 2010 and, 2) buildout -- the future time when the area has been fully developed. It recommends goals, objectives, and policies to balance land development, resource protection, disaster protection, and public expenditures.

The Chapter discusses existing land uses and potential uses allowed by the respective Lee Plan land use categories in the different portions of the study area. The Chapter also notes, by then designated Planning Districts important planning considerations such as hurricane evacuation, storm hazard mitigation, provision of adequate infrastructure and resource protection issues unique to the district. The Chapter provides the following discussion concerning "Land Use and Infrastructure Issues:"

Lee County has a very extensive, highly developed, and complex coastal area. The Coastal Study Area includes some 163 square miles of land, or about a fifth of the land area of the County. Because so much of the County lies within the 100 year flood zone, coastal management issues have a dominant role in overall land use planning and growth management. Despite extensive areas of protected wetlands, the Coastal Study Area includes some 40% of the 1985 tax base of the County; 16% of this tax base is located in the V (Velocity) Zone, the shoreline area most vulnerable to storm hazards. Because such a high proportion of the existing development is subject to coastal flooding, disaster management issues play a large role in land use planning and growth management. Finally, the complex geography of the Coastal Study Area with its barrier and sound coastal islands, its multiple rivers and bays, and its salt and freshwater wetlands, requires a sophisticated planning process that blends land use and environmental management with progressive public policymaking.

Because Lee County is subject to coastal storm and hurricanes, its land use and growth management policies must account for these potential natural disasters. While not a frequent target of hurricanes, the Lee shore has been struck in the past and prudence requires that the possibility of future strikes be considered in land use and coastal management policy. Because of uncertainty about the exact location and force of future hurricanes, plans for mitigating or reducing the negative impacts of such strikes are usually based on two time frames: 1) before the storm, when general mitigation measures may be taken, and 2) after the storm, when the worst is known about specific destruction and plans can be adjusted on the basis of actual damage assessments.

The Chapter then provides a brief discussion concerning "Pre-Storm Hazard Mitigation and Development Management:"

In the face of certain future coastal storms and likely future sea level rise, the dynamic barrier islands and beaches will be unstable platforms for urban development. Different policies are needed for the undeveloped barriers, which should be conserved in their natural state, exempted from public infrastructure investments, and allowed to retreat before wave forces; and for the developed barriers, which require a balance of conservation, beach replenishment, and development management to ensure protection of coastal resources, property, and human life. Similarly, the developed coastal sound islands, while not exposed to the same wave action as the barriers, also require a balance of conservation and development management to avoid overloading the carrying capacity of both ecological and manmade systems (such as evacuation routes).

Mainland areas subject to coastal flooding constitute a large proportion of existing and future development within the County. The shoreline of most of this area is now protected under the Lee Plan through designation of the coastal wetlands as very low density Resource Protection (environmentally critical) Areas. These wetlands must be strictly protected from urban development in the future, and conservation practices extended inland through drainage basin plans that recognize the interconnected nature of coastal natural resource systems. Future land development in all areas subject to coastal flooding must be regulated to ensure that public expenditures are not unduly exposed to storm hazards, that measures are taken to protect people and property, and that natural systems are conserved and enhanced.

Thus the 1988 Coastal study recognized the importance of balancing coastal development with limiting public expenditures to limit the exposure to storm hazards. The 1988 Coastal Study proposed three major goals to manage land use in the "Coastal Study Area." The proposed goals were "aimed at Resource Protection, Protection of Life and Property, and Limitation of Public Expenditures in Hazard Areas." The study numbered the recommended Goals and Policies sequentially and the subject of this staff report (Policy 75.1.4) appeared under Goal 2, Protection of Life and Property and was numbered as Policy 2.1.4. This Policy is reproduced below:

Policy 2.1.4: Land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories or assignment of minimum allowable densities where density ranges are permitted, in order to limit the future population exposed to coastal flooding and hurricane damage.

Staff prepared a draft Conservation and Coastal Management Element and presented the draft element at a series of Local Planning Agency (LPA) Public Hearings during 1988. The draft element was numbered in a different fashion than today. The specific policy subject to this amendment was discussed through this process. For example, at the May 19, 1988 LPA Public Hearing, Mr. Matt Uhle addressed the LPA in part stating the following:

The next one I'm concerned about is objective 5.1 which refers to densities within vulnerable A-zone areas being reduced where possible. The A-zones, I'm sure you all know, are almost all the property that we have on the coastward side of U.S. 41 and includes very large areas which are designated as being in urban service areas. I have grave concerns about a policy that says that densities within those areas will be reduced where possible. First of all it seems inconsistent with the whole thrust of the plan, secondly there are no standards in here at all, so if you own property in an A-zone and this policy is adopted you're looking at some sort of vague policy saying, well sometime in the future the government may try to reduce your density but maybe not, who knows.

I have serious problems with that. That's kind of implemented in policy 5.1.4, which is "land use designations of undeveloped areas within the A-zone shall be considered for reduced density categories."

Mr. Mike Roeder also addressed this topic at the same public hearing:

Another point was brought up about the idea of reducing densities in the A-zone where possible. This underlines a conflict that was pointed out in the 1984 plan, which is that when you overlay the urban service categories on the flood hazard zones you get a pretty neat fit and that seems to be an internal inconsistency in the whole plan. In the preface to the 1984 plan they tried to address that and basically talked around the problem without resolving it. This new policy seems to bring it up to the forefront again in saying we'll try and reduce densities because of flooding and at the same time all the other elements of the plan say we want to concentrate population where we have the infrastructure and services. It's a large problem that needs some more attention because the two elements are working at cross purposes.

The staff produced a revised draft element and the draft was discussed at the June 10, 1988 LPA Public Hearing. At this Public Hearing Mr Matt Uhle again addressed this topic:

The second thing that I'm concerned about is that the language about lowering densities in A zones has been watered down to some extent, but it's still there. In objective 5.1, in policy 5.1.5, it still maintains that the A zones include most of the valuable and developable land in Lee County, and that all these policies are going to do is give a lot of people a lot of fears about what's going to happen to their property without creating any real standards about when and if it's going to happen. I really don't think that that language ought to remain in the policy.

In response to a member of the public asking staff to clarify the intent of the proposed policy, Mr. Bill Spikowski provided:

We've included a new introductory sentence that says, "though the Lee Plan amendment process." There was fear at the last meeting that this would be a staff determination or something. We wanted to make it clear that this is through the formal plan amendment process.

In a later response to a question raised by an LPA member, Mr. Spikowski in part provided the following:

...But the intent of the change here is indicating that the plan amendment process is where that should be since there is reference to the lower ends of the density ranges. It implied that when you come in to get your development order under existing zoning, you'd get strong-armed and we don't want that impression to remain.

Staff believes the important point is that it was not staff's intent to apply the proposed policy to existing zoned property. A slightly modified version of this recommended language was adopted (January 31, 1989) into the 1989 Lee Plan. This Policy is reproduced:

Policy 75.1.5: *Through the Lee Plan amendment process, land use designations of undeveloped areas within the A Zone shall be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding and hurricane damage.*

The policy language has changed slightly as a result of two amendments. The first changes occurred during the 1993/1994 EAR process. The reference to "A Zone" was amended to "coastal high hazard areas" and the reference to "hurricane damage" was eliminated. The published EAR document carries no explanation for these changes. The second amendment replaced the word "shall" with the word "will."

The policy has been the subject of some debate as to the meaning or applicability of the parenthetical phrase. Staff recognizes that the assignment of density for a particular property happens in several instances, once when the property is included in a Future Land Use category, and when the property is zoned to allow specific uses. At the October 19, 2004 regular Board of County Commissioners meeting, Commissioner Judah suggested that the provisions of Policy 75.1.4 should apply during the rezoning process and not only through the Lee Plan amendment process. Staff believes that this makes sense and does not impact properties that already have achieved zoning approvals. Staff believe it is appropriate to consider a rezoning proposal in light of the individual and surrounding properties characteristics. Staff recommends that the Lee Plan be amended as depicted below:

POLICY 75.1.4: Through the Lee Plan amendment process, future land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories ~~(or assignment of minimum allowable densities where density ranges are permitted)~~ in order to limit the future population exposed to coastal flooding.

POLICY 75.1.5: Zoning requests located in the coastal high hazard area will be considered for reduced or minimum density assignments, in accordance with their future land use category density range.

This proposed language separates the issue, allowing consideration during the plan amendment process and during any rezoning process.

B. CONCLUSIONS

The proposed amendment represents a minor adjustment in Board policy. The proposed policy represents sound Board policy to evaluate through the zoning process individual properties circumstances. This evaluation should be done in concert with an evaluation of other individual characteristics such as compatibility with existing uses, desired urban form, and availability of urban services.

C. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners transmit the proposed plan amendment to the Florida Department of Community Affairs for their review.

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

DATE OF PUBLIC HEARING: March 28, 2005

A. LOCAL PLANNING AGENCY REVIEW

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

D. VOTE:

NOEL ANDRESS

MATT BIXLER

DEREK BURR

RONALD INGE

CARLETON RYFFEL

RAYMOND SCHUMANN

VACANT

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

DATE OF TRANSMITTAL HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

TAMMY HALL

BOB JANES

RAY JUDAH

DOUG ST. CERNY

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

DATE OF ORC REPORT:

- A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**
- B. STAFF RESPONSE**
- C. STAFF RECOMMENDATION**

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

DATE OF ADOPTION HEARING:

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

BOB JANES

RAY JUDAH

DOUG ST. CERNY

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20041415

1. REQUESTED MOTION:

ACTION REQUESTED: Initiate in the current round of Lee Plan amendments, a Board of County Commissioner sponsored text amendment to reevaluate the provisions of Lee Plan Policy 75.1.4 (consideration of reduced density in the Coastal High Hazard Area).

WHY ACTION IS NECESSARY: The September deadline has passed and the reevaluation of this policy would have to be put off for almost one year.

WHAT ACTION ACCOMPLISHES: Allows for the reevaluation of Policy 75.1.4 during the current Lee Plan amendment cycle.

2. DEPARTMENTAL CATEGORY: 04
COMMISSION DISTRICT # CW

A4A

3. MEETING DATE:

11-09-2004

4. AGENDA:

CONSENT

☒ **ADMINISTRATIVE**

APPEALS

PUBLIC

WALK ON

5 Min. TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE

ORDINANCE

ADMIN. CODE

☒ **OTHER**

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER

B. DEPARTMENT

Community Development

C. DIVISION

Planning

BY: Paul O'Connor, AICP, Director

POC 10/26/04

7. BACKGROUND:

At the October 19, 2004 regular Board meeting Commissioner Judah suggested that the provisions of Policy 75.1.4 (consideration of reduced density in the Coastal High Hazard Area) should apply during the rezoning process and not only through the Lee Plan amendment process. Approving this action will allow staff to perform a reevaluation of this policy in the current Lee Plan amendment cycle. The focus of this reevaluation will be the merits of considering lower densities within in the coastal high hazard areas during the rezoning process.

Lee Plan Policy 75.1.4 states: "Through the Lee Plan amendment process, land use designations of undeveloped areas within coastal high hazard areas will be considered for reduced density categories (or assignment of minimum allowable densities where density ranges are permitted) in order to limit the future population exposed to coastal flooding."

Note: This action will suspend, for this instance only, the September deadline contained in Administrative Code 13-6, Annual Plan Amendment Procedure to the Lee (Comprehensive) Plan.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Mam Gibbs</i>	N/A	N/A	N/A	<i>[Signature]</i>	<i>OA</i>	<i>OM</i>	<i>Risk</i>	<i>GC</i>	<i>[Signature]</i>
					<i>10/28/04</i>	<i>10/28/04</i>	<i>10/28/04</i>	<i>10/28/04</i>	

10. COMMISSION ACTION:

☒ **APPROVED**
☐ **DENIED**
☐ **DEFERRED**
☐ **OTHER**

Rec. by CoAtty
Date: <i>10/27/04</i>
Time: <i>8:45</i>
Forwarded To:

RECEIVED BY
COUNTY ADMIN: <i>D</i>
<i>10/27/04</i>
<i>11:40 am SLT</i>
COUNTY ADMIN
FORWARDED TO: <i>PL</i>
<i>10/28/04</i>
<i>9pm</i>

October 19, 2004

The Regular Meeting of the Board of Lee County Commissioners was held on this date with the following Commissioners present:

John E. Albion, Chairman
Douglas R. St. Cerny, Vice-Chairman
Ray Judah
Andrew Coy
Robert P. Janes

The Chairman called the meeting to order at 9:33 a.m. The Invocation was given by Pastor Walter Still of Peace Lutheran Church; and, by request of Commissioner Albion, offered a moment of silence and prayer in remembrance of EMS Employee Chuck "Chaz" Keesey; followed by the Pledge of Allegiance to the Flag.

PRESENTATIONS

Commissioner Judah briefly described the charitable accomplishments of Jevon Kearse, noted Mr. Kearse was unable to attend today's meeting to accept the Appreciation Resolution, and requested that the presentation be deferred until the conclusion of football season. (#20041308-Commissioner Judah)

ANNOUNCEMENTS

Referring to the Agenda Revision Recap Sheet dated October 19, 2004, the Chairman announced that:

Consent Agenda Item 5(b) should be deferred indefinitely. Commissioner Janes so moved, seconded by Commissioner St. Cerny. Commissioner Judah expressed outrage at the allegations against Nations Association President Reverend Israel Suarez and reviewed the contributions that Reverend Suarez has made to the community through the Nations Association. Assistant County Attorney Andrea R. Fraser explained that, under Civil Rights Act of 1964 Title VII, no funding can be allocated to not-for-profit organizations while there are investigations into illegal activity. In response to Commissioner Judah's questions regarding the investigation process, Attorney Fraser stated that the allegations made are worthy of investigation, and that she did not anticipate that the investigation would take too long. Commissioner Albion commented that, despite personal reassurances that Reverend Suarez is not responsible for these allegations, it is important to abide by the federal law for the sake of future funding and relations with other organizations. Commissioner Coy expressed suspicions of fraudulence in an effort to thwart the Nations Association of obtaining funding. Commissioner Judah stated that the Nations Association has provided comprehensive and legal bookkeeping records to the county, as was mandated to receive funding; and expressed his hope that Nations Association would receive funding at the conclusion of the investigation. The motion was called and carried with Commissioners Coy and Judah voting nay.

There are three Walk-ons to be heard following the Administrative Agenda.

Consent Agenda Items 14(a), 14(b), and 14(c) should be moved to the Administrative Agenda. Commissioner Coy so moved, seconded by Commissioner St. Cerny, called and carried.

9:30 A.M. AGENDA ITEM - Public Comment on Agenda Items Consent (C) and Administrative (A)

WO#2 - Housing Development Corporation Board Director Michael Reitmann spoke in support of the item, requesting that the Board approve full funding.

A8(a) - Suncoast Neighborhood Task Force Representative James Gillespie spoke in favor of the item, requesting that the Board approve the recommendations of the Solid Waste Collection Advisory Committee.

C5(b) - Suncoast Neighborhood Task Force Representative James Gillespie stated that North Fort Myers survived the post-hurricane devastation because of the North Fort Myers Fire Department and the Nations Association; and further expressed confidence that an investigation will clear Nations Association President Reverend Suarez's name of wrongful allegations and bring more awareness to the benefits brought to the community by the organization.

The following are the Consent Agenda items that each Board member wished to have discussed:

Commissioner St. Cerny - None
Commissioner Coy - None
Commissioner Judah - 1(a)
Commissioner Albion - None
Commissioner Janes - None

CONSENT AGENDA

1. COUNTY ADMINISTRATION

(a) **ACTION REQUESTED:**

Establish the Smart Growth Director position as a permanent position and the Smart Growth Advisory Committee as a permanent committee.

WHY ACTION IS NECESSARY:

Original authorization for director position and committee was for two years with a single one-year renewal option, for a total of three years, starting October 23, 2001.

WHAT ACTION ACCOMPLISHES:

Gives permanence to a position and committee that has become integral to accomplishing the county's long-term growth goals and objectives. (#20041306-County Manager)

PULLED FOR DISCUSSION

Commissioner Judah moved the item, seconded by Commissioner Coy. Commissioner Judah expressed enormous gratitude and support for the Smart Growth Advisory Committee and Smart Growth Director Wayne Daltry. The Board agreed with Commissioner Judah's statements. The motion was called and carried.

2. CONSTRUCTION AND DESIGN

(a) **ACTION REQUESTED:**

Approve the change of ownership of the lease for 2201 Second Street, Fort Myers, Florida, from Wachovia Bank, National Association, to First States Investors 3300, LLC. Lee County leases 10,616 square feet in Suite 300, and 3,861 square feet of space in Suite 400 of this building.

WHY ACTION IS NECESSARY:

Board must approve all lease agreements and changes in ownership for those leases.

WHAT ACTION ACCOMPLISHES:

Enables Lee County to be able to send rental payments and notices to the new owner. (#20041301-Construction and Design)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

3. COUNTY COMMISSIONERS

No requests received.

4. COMMUNITY DEVELOPMENT

(a) **ACTION REQUESTED:**

Accept Petition No. VAC2004-00052, submitted by Garton Enterprises, Inc., to vacate a 12 foot wide public utility easement, between Lots 8 and 9, located on Block 10, Unit 1, as shown in Plat Book 15, at Page 81 of the Public Records of Lee County, Florida; and adopt a resolution setting a Public Hearing for 5:00 p.m. on November 9, 2004. The site is located at 5559 6th St, W. Lehigh Acres.

WHY ACTION IS NECESSARY:

To construct a light industrial building on the combined lots. Vacating this easement will not alter exiting utility conditions, and the easement is not necessary to accommodate any future utility requirements..

WHAT ACTION ACCOMPLISHES:

Sets the time and date of the Public Hearing. (S30-T44S-R26E) (District #5) (#20041255-Development Services)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-15

5. HUMAN SERVICES

(a) **ACTION REQUESTED:**

Approve and execute a contract between the State of Florida Department of Health and the Lee County Board of County Commissioners, for services provided by the Lee County Health Department, from October 1, 2004 through September 30, 2005, which provides \$1,397,760.00 in cash and additional in kind resources.

WHY ACTION IS NECESSARY:

To provide county funds in the amount of \$1,397,760.00, for public health services, retention of the county assessed portion of public health fees and other revenues, and in-kind services. Funds were approved during the Fiscal Year 2005 Budget Public Hearings.

WHAT ACTION ACCOMPLISHES:

Provides county funding and support to the Lee County Health Department. (#20041289-Human Services)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

(b) **ACTION REQUESTED:**

Authorize Chairman to sign a contract with the Nations Association, Inc., in the amount of \$20,000.00, to reimburse the agency for unforeseen expenses related to Hurricane Charley that were not reimbursed by another agency.

WHY ACTION IS NECESSARY:

To provide funding to the Nations Association, Inc.

WHAT ACTION ACCOMPLISHES:

Reimburses the Nations Association, Inc. for hurricane related expenses. (#20041295-Human Services)

DURING THE ANNOUNCEMENT'S PORTION OF THE MEETING, THE CHAIRMAN ANNOUNCED THAT: Consent Agenda Item 5(b) should be deferred indefinitely. Commissioner Janes so moved, seconded by Commissioner St. Cerny. Commissioner Judah expressed outrage at the allegations against Nations Association President Reverend Israel Suarez and reviewed the contributions that Reverend Suarez has made to the community through the Nations Association. Assistant County Attorney Andrea R. Fraser explained that, under Civil Rights Act of 1964 Title VII, no funding can be allocated to not-for-profit organizations while there are investigations into illegal activity. In response to Commissioner Judah's questions regarding the investigation process, Attorney Fraser stated that the allegations made are worthy of investigation, and that she did not anticipate that the investigation would take too long. Commissioner Albion commented that, despite personal reassurances that Reverend Suarez is not responsible for these allegations, it is important to abide by the federal law for the sake of future funding and relations with other organizations. Commissioner Coy expressed suspicions of fraudulence in an effort to thwart the Nations Association of obtaining funding. Commissioner Judah stated that the Nations Association has provided comprehensive and legal bookkeeping records to the county, as was mandated to receive funding; and expressed his hope that Nations Association would receive funding at the conclusion of the investigation. The motion was called and carried with Commissioners Coy and Judah voting nay.

6. INDEPENDENT

(a) **ACTION REQUESTED:**

Approve Purchase Agreement for acquisition of Parcel 340-RW, STRAP No. 14-47-25-B2-00200.0890, with Larry K. and Penelope K. Bills, for Three Oaks Parkway South Extension Project No. 4043, in the amount of \$2,500.00; authorize the payment of costs to close, in the approximate amount of \$1,000.00; and authorize the Division of County Lands to handle all documentation necessary to complete the transaction.

WHY ACTION IS NECESSARY:

The Board must accept all real estate conveyances to Lee County.

WHAT ACTION ACCOMPLISHES:

The Board avoids Eminent Domain. (#20041225-County Lands)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

(b) **ACTION REQUESTED:**

Approve the first addendum to the Interlocal Agreement for Animal Services, to provide comprehensive services to the City of Cape Coral and the City of Fort Myers.

WHY ACTION IS NECESSARY:

Provide recalculation of appropriate fees for the municipalities.

WHAT THE ACTION ACCOMPLISHES:

Distribution of costs based on services used. (#20041268-Animal Services)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

7. PUBLIC SAFETY**(a) ACTION REQUESTED:**

Approve and execute the Emergency Management Preparedness and Assistance (EMPA) Base Grant Agreement, with the Florida Department of Community Affairs, which provides a \$102,959.00 grant to enhance the county's emergency management program; authorize four grant funded, part-time employees, half working sixteen hours per week and half working twenty-four hours per week; and approve the budget amendment resolution, in the general fund, for Fiscal Year 2004, in the amount of \$102,959.00.

WHY ACTION IS NECESSARY:

State law requires the Board's approval of allocation before expenses can be applied against the grant funding.

WHAT ACTION ACCOMPLISHES:

Furnishes funding to improve the county's emergency program in a manner consistent with the State Emergency Management Plan and supporting programs. (#20041263-Emergency Management)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-16

(b) ACTION REQUESTED:

Authorize the Chairman to execute an agreement with the Department of Community Affairs for Regional Domestic Security Task Force (RDSTF) Plan Development funding, in the amount \$64,583.00; and approve budget resolution for the same amount.

WHY ACTION IS NECESSARY:

Board approval is required for all agreements.

WHAT ACTION ACCOMPLISHES:

Provides financial support to Lee County to develop RDSTF plans, procedures, statements of purpose (SOP), protocols, assessments, specifications and standards. (#20041285-Emergency Management)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-17

8. SOLID WASTE-NATURAL RESOURCES

No requests received.

9. TRANSPORTATION**(a) ACTION REQUESTED:**

Approve Local Agency Program Agreement with Florida Department of Transportation and Tri-Party Cooperative Agreement with the Federal Highway Administration, the Florida Department of Transportation and Lee County, for the Colonial Boulevard at Metro Parkway Queue Jump Design; approve authorizing resolutions for the Chairman to execute agreements, as well as a budget amendment resolution; approve budget transfer from Gas Tax Reserves; and amend Fiscal Year 2004 through 2005 and 2008 through 2009 Capital Improvement Program (CIP) accordingly.

WHY ACTION IS NECESSARY:

All amendments to the CIP and agreements require Board approval.

WHAT ACTION ACCOMPLISHES:

Allows DOT to proceed with design of the value pricing queue jump, which will address point periodic congestion problems, commonly known as "bottlenecks," in the local transportation network. (#20041273-Transportation)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NOS. 04-10-18 THROUGH 04-10-20

(b) ACTION REQUESTED:

Approve budget amendment resolution for the Local Option Gas Tax Construction Fund, in the amount of \$194,371.00, which partially funds the Alico Road Four Lining Project; approve a transfer of funds in the Transportation Improvements Fund, to partially fund the Three Oaks Parkway Extension Project; and amend Fiscal Years 2004 through 2005 and 2008 through 2009 Capital Improvement Program (CIP).

WHY ACTION IS NECESSARY:

All amendments to the CIP require the Board's approval.

WHAT ACTION ACCOMPLISHES:

Allows Lee County to expend funds, which have time constraints, to avoid penalties. Funds are being assigned from Reserves, in the amount of \$678,869.00, and from CIP, in the amount of \$292,196.00, to the Alico Road Four Laning Project. The funding is being replaced, in the CIP, with Gas Tax Construction funding, in an equal dollar amount. (#20041283-Transportation)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-21**10. UTILITIES****(a) ACTION REQUESTED:**

Approve construction of a water main extension serving The Reserve at Estero – Sales Center. This is a developer contributed asset project located along the north side of Estero Parkway, approximately one mile east of U.S. 41 South.

WHY ACTION IS NECESSARY:

To provide potable water service and fire protection to this proposed sale facility.

WHAT ACTION ACCOMPLISHES:

Provides adequate utility infrastructure to support development of the subject property, and complies with the Lee County Utilities Operations Manual. (#20041174-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

(b) ACTION REQUESTED:

Approve final acceptance, by Resolution, as a donation for one fire hydrant serving King Sod, Phase 2. This is a developer contributed asset project located on the south side of Pondella Road, approximately 800 feet west of Orange Grove Boulevard.

WHY ACTION IS NECESSARY:

To provide fire protection to this phase of the recently constructed commercial project.

WHAT ACTION ACCOMPLISHES:

Places the fire hydrant into operation, and complies with the Lee County Utilities Operations Manual. (#20041175-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-22**(c) ACTION REQUESTED:**

Approve final acceptance, by Resolution and recording of one utility easement grant, as a donation of a water main extension, three fire hydrants, one six inch diameter fire line, and a gravity main extension serving The Park Shops at Andrea Lane. This is a developer contributed asset project located on the northeast corner of South Tamiami Trail and Andrea Lane, approximately one-half mile north of Six Mile Cypress Parkway.

WHY ACTION IS NECESSARY:

To provide potable water service, fire protection and sanitary sewer service to this recently constructed commercial project.

WHAT ACTION ACCOMPLISHES:

Places the water facilities and gravity main into operation, and complies with the Lee County Utilities Operations Manual. (#20041176-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-23**(d) ACTION REQUESTED:**

Approve for acceptance, and filing with the Clerk's Office, Minutes Department, an after-the-fact Emergency, under Resolution 03-07-08, for the purchase of 13 Control Panels for the newly acquired GES lift stations, from the lowest bidder, Digital Control Corporation, in the amount of \$104,122.00.

WHY ACTION IS NECESSARY:

The Board's approval is required for purchases over \$50,000.00.

WHAT ACTION ACCOMPLISHES:

Provides after-the-fact approval, under the Emergency Resolution 03-07-08, for Purchase Order #53869, to Digital Control Corporation, for the purchase of 13 Control Panels for the newly acquired GES lift stations. (#20041177-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

(e) **ACTION REQUESTED:**

Approve final acceptance, by Resolution and recording of one easement, as a donation for a water main extension, one four inch diameter fire line, two fire hydrants, and three water services serving T.I.B. Bank of the Keys Plaza. This is a developer contributed asset project located on the east side of Metro Parkway, and one-quarter mile north of Crystal Drive.

WHY ACTION IS NECESSARY:

Provides potable water service and fire protection to the recently constructed commercial development.

WHAT ACTION ACCOMPLISHES:

Places the water main, fire line, and fire hydrants into operation; and complies with the Lee County Utilities Operations Manual. (#20041178-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-24

(f) **ACTION REQUESTED:**

Approve for acceptance, and filing with the Clerk's Office, Minutes Department, an after-the-fact Emergency, under Resolution No. 03-07-08, for the purchase of 64 Motorola Receiver Transmitter Units (RTU), from DCR Engineering Services for Lee County Utilities (LCU) lift stations, in the amount of \$340,821.00.

WHY ACTION IS NECESSARY:

Board approval is required for purchases over \$50,000.00.

WHAT ACTION ACCOMPLISHES:

Provides after-the-fact approval, under the Emergency Resolution 03-07-08, for Purchase Order #53333, to DCR Engineering Services, for the purchase of 64 RTUs for the LCU's lift stations, in the amount of \$340,821.00. (#20041236-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

(g) **ACTION REQUESTED:**

Approve final acceptance, by Resolution, as a donation for a hydrant branch line and one fire hydrant serving the HealthPark Medical Offices. This is a developer contributed asset project located on the west side of Bass, approximately one-third mile north of Summerlin Road.

WHY ACTION IS NECESSARY:

To provide fire protection to the recently constructed medical office building.

WHAT ACTION ACCOMPLISHES:

Places the fire hydrant into operation, and complies with the Lee County Utilities Operations Manual. (#20041237-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-25

(h) **ACTION REQUESTED:**

Approve final acceptance, by Resolution and recording of one utility easement, as a donation of water distribution and gravity collection systems and eight four inch diameter fire lines serving Miromar Lakes, Mediterranean Village, Phase 4 of Vivaldi. This is a developer contributed asset project located on the east side of Ben Hill Griffin Parkway, approximately one and one-quarter miles south of Alico Road.

WHY ACTION IS NECESSARY:

To provide potable water service, fire protection and sanitary sewer service to this phase of the residential development.

WHAT ACTION ACCOMPLISHES:

Places the water and sewer systems into operation, and complies with the Lee County Utilities Operations Manual. (#20041238-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-26

(i) **ACTION REQUESTED:**

Approve final acceptance, by Resolution, as a donation of water distribution and gravity collection systems and two four inch diameter fire lines serving Heritage Pointe – Phases 2B, 3A, 3B, 4A, 4B, 5 & 6. This is a developer contributed asset project located along Pine Ridge Road, approximately 2,000 feet north of Summerlin Road.

WHY ACTION IS NECESSARY:

To provide potable water service, fire protection and sanitary sewer service to these phases of the multi-family residential development.

WHAT ACTION ACCOMPLISHES:

Places the water and sewer systems into operation, and complies with the Lee County Utilities Operations Manual. (#20041241-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

RESOLUTION NO. 04-10-27

(j) **ACTION REQUESTED:**

Approve award of Formal Quotation No. Q-040523, Sulfuric Acid for Utilities in various Water Treatment Plants, to the lowest quoter, meeting all specifications requirements, Transammonia, Inc. This quote shall be in effect for one year, or until new quotes are taken and awarded. Authorize the Chairman to execute and sign the accompanying purchasing agreement; and request authority to renew this quote for four additional one-year periods, at the same terms and conditions, if in the best interest of Lee County.

WHY ACTION IS NECESSARY:

The Board's approval is required for expenditures exceeding \$50,000.00.

WHAT ACTION ACCOMPLISHES:

Provides the purchase of sulfuric acid, on an as-needed basis, for various water facilities within the Lee County Utilities Department. The annual estimated savings to taxpayers is \$120,000.00. (#20041270-Utilities)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

11. PARKS AND RECREATION

No requests received.

12. COUNTY ATTORNEY

(a) **ACTION REQUESTED:**

Approve the confirmatory easement to Watermen at Parkway, LLC, confirming the easement and access rights established by court order.

WHY ACTION IS NECESSARY:

Board approval is necessary to execute a confirmatory easement.

WHAT ACTION ACCOMPLISHES:

Confirms an easement established by court order, and removes a cloud on title. (#20041288-County Attorney)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

13. HEARING EXAMINER

No requests received.

14. PORT AUTHORITY

(a) **ACTION REQUESTED:**

Request the Board authorize execution of Supplemental Agreement No. 8 to Contract No. 2371, between the Lee County Port Authority and Johnson Engineering, Inc., for various Fiscal Year 2004/2005 General Environmental and Planning Management, and Related Consulting Services, in the amount of \$235,480.00. Funds are available in account 41200, SWFIA Operating; and are contingent upon final adoption of the Fiscal Year 2004/2005 Lee County Port Authority Budget.

DURING THE ANNOUNCEMENTS PORTION OF THE MEETING, THE CHAIRMAN ANNOUNCED THAT: Consent Agenda Items 14(a), 14(b), and 14(c) should be moved to the Administrative Agenda. SEE ADMINISTRATIVE AGENDA ITEM 14(a) FOR ACTION TAKEN.

(b) **ACTION REQUESTED:**

Request the Board approve the purchase and installation of telecommunications data equipment, for the Midfield Terminal Complex, from Siemens Communications, Inc./Extreme, off Florida State Contract No. 250-000-03-1, in the amount of \$426,234.77.

DURING THE ANNOUNCEMENTS PORTION OF THE MEETING, THE CHAIRMAN ANNOUNCED THAT: Consent Agenda Items 14(a), 14(b), and 14(c) should be moved to the Administrative Agenda. SEE ADMINISTRATIVE AGENDA ITEM 14(b) FOR ACTION TAKEN.

(c) **ACTION REQUESTED:**

Request the Board approve the purchase and installation of Telecommunications Equipment Private Branch Exchange (PBX)/Voice, to provide telephone service for the Midfield Terminal Complex, from Sprint, off Florida State Contract No. 730-650-99-1, in the amount of \$294,979.91.

DURING THE ANNOUNCEMENTS PORTION OF THE MEETING, THE CHAIRMAN ANNOUNCED THAT: Consent Agenda Items 14(a), 14(b), and 14(c) should be moved to the Administrative Agenda. SEE ADMINISTRATIVE AGENDA ITEM 14(c) FOR ACTION TAKEN.

15. CONSTITUTIONAL OFFICERS

(a) **ACTION REQUESTED:**

Approve disbursements.

WHY ACTION IS NECESSARY:

Florida Statute Chapter 136.06(1) requires that all county disbursements be recorded in the Minutes of the Board.

WHAT ACTION ACCOMPLISHES:

Compliance with the requirements of Florida Statute 136.06(1). (#20041292-Clerk of Courts)

Commissioner Judah moved the item, seconded by Commissioner Janes, called and carried.

AT THIS TIME, ADMINISTRATIVE AGENDA ITEMS 14(a), 14(b), AND 14(c) WERE HEARD. SEE THAT PORTION OF THE MEETING.

ADMINISTRATIVE AGENDA

1. COUNTY ADMINISTRATION

No requests received.

2. CONSTRUCTION AND DESIGN

(a) **ACTION REQUESTED:**

Award Construction Manager (CM) Agreement, under RFQ-01-04 County-wide Continuing Contract For Construction Management, for the Lee County Supervisor of Elections Center Renovations, Phase 2 Project, to Gary Wilkes, Inc., Contract No. 1740, for the guaranteed maximum price (GMP) of \$805,046.00, which includes the \$55,003.00 CM fee; approve budget transfer from Capital Improvement Program (CIP) Fund reserves, in the amount of \$800,000.00; amend Fiscal Year 2004 through 2005 and 2008 through 2009 CIP, for the Supervisor of Elections Center Project; and approve waiving of the formal process by authorizing the use of the direct material purchase orders, based on CM's competitive process, which allows the county to purchase directly from supplier of equipment and/or materials as a cost/time saving measure. This project is to reach final completion in 243 calendar days.

WHY ACTION IS NECESSARY:

The Board's approval is required.

WHAT ACTION ACCOMPLISHES:

Provides the county with a CM for Phase 2 of the renovation of the Elections Center Warehouse, including but not limited to, HVAC, plumbing, electrical, alarm, fire protection, carpentry, and painting. (#20041291-Construction and Design)

Commissioner Judah moved the item, seconded by Commissioner Coy, called and carried.

3. COUNTY COMMISSIONERS

No requests received.

4. COMMUNITY DEVELOPMENT

(a) **ACTION REQUESTED:**

Concur with the ranking of Consultants by the Competitive Negotiations Committee, for CN-04-17 Blasting Study For Lee County, in the following order of ranking; and authorize contract negotiations to commence with the number one ranked firm:

- (1) TerraDinamica
- (2) Precision Blasting Services

Authorize the Chairman to execute an agreement, for an amount not-to-exceed \$185,000.00. By the Board's direction, funds, including developer funds, were not discussed or budgeted for this item until the time of the consultant ranking.

WHY ACTION IS NECESSARY:

The Board's approval is required.

WHAT ACTION ACCOMPLISHES:

Consultants to provide an analysis of land development blasting, in the unincorporated part of the county. Other items to be addressed in the study are an evaluation of alternative methods to blasting, and state of the art techniques and options to reduce or eliminate blasting impacts, including adverse human response. (#20041299-Community Development)

Commissioner Judah moved the item, seconded by Commissioner Janes. Community Development Director Mary Gibbs stated that the Board decidedly reserved the discussion of budgeting this item until the time of the consultant ranking; and notified that, on suggestion from the Board, developers are willing to contribute \$50,000.00 to fund the study, and that \$135,000.00 is still needed. In response to Commissioner Albion's inquiry regarding the use of permit fees to off-set the costs, Assistant County Attorney Timothy Jones stated that building permit fees cannot be used, and, even though blasting permit fees could potentially be used, there is not enough available to make a difference in the remaining cost of this study. In response to Commissioner Judah's question regarding which portion of the county budget will cover the remaining costs, Ms. Gibbs stated that funds could be used from the Unincorporated / MSTU reserves. Commissioner Albion stated that monies contributed by developers is contributed with a "no strings" understanding and contributions from companies will be recognized as a contribution to the industry and community. After Chairman Albion clarified that the funding would come from Unincorporated / MSTU reserves, the motion was called and carried.

5. HUMAN SERVICES

No requests received.

6. INDEPENDENT

No requests received.

7. PUBLIC SAFETY

No requests received.

8. SOLID WASTE-NATURAL RESOURCES

(a) ACTION REQUESTED:

Approve the recommendations of the Solid Waste Collection Advisory Committee (SWCAC) and Staff; authorize Staff to incorporate the recommendations for collection service levels, in the Request for Qualification and Request for Bids for Solid Waste Franchise Collection Services.

WHY ACTION IS NECESSARY:

The Board directed SWCAC and Staff to present recommendations for consideration, so that the Board, with the public's input, can make key decisions on the county's collection of solid wastes.

WHAT ACTION ACCOMPLISHES:

Authorizes Staff to proceed with the changes to be made through the procurement process of Solid Waste Collections Services, in the new franchise collection contracts. (#20041302-Solid Waste)

Commissioner Judah moved the item, seconded by Commissioner Coy. Commissioner Coy thanked SWCAC Representative James Gillespie and his wife, Susie Gillespie, for their hard work and personal sacrifices for North Fort Myers and the Suncoast Neighborhood Task Force. The motion was called and carried.

9. TRANSPORTATION

No requests received.

10. UTILITIES

No requests received.

11. **PARKS AND RECREATION**

No requests received.

12. **COUNTY ATTORNEY**

No requests received.

13. **HEARING EXAMINER**

No requests received.

IMMEDIATELY PRECEEDING THE ADMINISTRATIVE AGENDA:
AT THIS TIME, THE BOARD CONVENED AS THE BOARD OF PORT COMMISSIONERS.

14. **PORT AUTHORITY**

THE FOLLOWING ITEM WAS MOVED FROM THE CONSENT AGENDA:

(a) **ACTION REQUESTED:**

Request the Board authorize execution of Supplemental Agreement No. 8 to Contract No. 2371, between the Lee County Port Authority and Johnson Engineering, Inc., for various Fiscal Year 2004/2005 General Environmental and Planning Management, and Related Consulting Services, in the amount of \$235,480.00. Funds are available in account 41200, SWFIA Operating; and are contingent upon final adoption of the Fiscal Year 2004/2005 Lee County Port Authority Budget.

FOR ACTION TAKEN, SEE THE MINUTES OF THE LEE COUNTY PORT AUTHORITY.

THE FOLLOWING ITEM WAS MOVED FROM THE CONSENT AGENDA:

(b) **ACTION REQUESTED:**

Request the Board approve the purchase and installation of telecommunications data equipment, for the Midfield Terminal Complex, from Siemens Communications, Inc./Extreme, off Florida State Contract No. 250-000-03-1, in the amount of \$426,234.77.

FOR ACTION TAKEN, SEE THE MINUTES OF THE LEE COUNTY PORT AUTHORITY.

THE FOLLOWING ITEM WAS MOVED FROM THE CONSENT AGENDA:

(c) **ACTION REQUESTED:**

Request the Board approve the purchase and installation of Telecommunications Equipment Private Branch Exchange (PBX)/Voice, to provide telephone service for the Midfield Terminal Complex, from Sprint, off Florida State Contract No. 730-650-99-1, in the amount of \$294,979.91.

FOR ACTION TAKEN, SEE THE MINUTES OF THE LEE COUNTY PORT AUTHORITY.

AT THIS TIME, THE BOARD RECONVENED AS THE BOARD OF COUNTY COMMISSIONERS.

15. **CONSTITUTIONAL OFFICERS**

No requests received.

WALK-ON ITEM NO. 1

1. **COUNTY ADMINISTRATION**

ACTION REQUESTED:

Receive presentation from Clerk of Courts Charlie Green on the county's maintenance of Sanibel Causeway and compliance with maintenance inspections, audits, bond covenants, and pertinent agreements. (#20041348-County Manager)

REASON FOR WALK-ON:

Requested by the Board at the October 12, 2004 Regular Meeting.

Clerk of Courts Charlie Green reviewed previous audits and the summary of the previous audits provided by Public Works Director Jim Lavender; stated that, after review of the numerous financial audits, there was no misappropriation of funds, and that inspections on the Sanibel Causeway have increased; noted that matters concerning this bridge receive independent audits, outside audits, and internal audits, all of which are consistent with each other; and recommended that an additional independent audit not be performed since it would not reveal any new information. Discussion ensued regarding the questionable information expressed in editorials published in *The News-Press*. Mr. Green stated that more time wasted in discussion and controversy increases costs for repair and construction and increases the poor state of the bridge. The Board requested that Mr. Green provide a written statement to confirm his statements made during this meeting. Mr. Green stated that the audits speak for themselves, and audits requested by the City of Sanibel reveal the same information; and further stated that the Sanibel Causeway was constructed cheaply and quickly at a time when bridge building requirements were much less than today; and recommended that, if engineers suggested that the bridge be replaced, that it should be replaced. In response to Commissioner Albion's request for the written statement from the Clerk of Courts to include information regarding toll revenues, Mr. Green stated that bonds have restrictive covenants that severely limit how toll revenues can be spent and that there was no violation of those covenants. At Commissioner Albion's request for clarification of statements made by the Department of Transportation to the press, DOT Deputy Director Paul W. Wingard denied that statements regarding the bridge maintenance were ever made to the press; and reviewed the history of maintenance performed on the Sanibel Causeway. In response to Commissioner Albion's inquiry, Mr. Wingard stated that typically bridges are look at having a fifty year life; however, the Sanibel Causeway was built to the minimal standards at that time. Commissioner Albion stated that the bridge was not only built cheaply and quickly, it was also constructed in an inappropriate design and was located in harm's way. Mr. Wingard stated that no serious recommendations for alternatives to the current bridge plans have been submitted to the county from licensed, professional engineers. After discussion on the issue, Commissioner Judah moved that a letter be sent to the City of Sanibel City Counsel to bring forth a recommendation from a reputable, licensed engineering firm to dispute what the Lee County Department of Transportation and the numerous consulting firms have recommended. The motion was seconded by Commissioner Janes, called and carried. In regard to Commissioner Albion's statements concerning the protests against the six dollar toll and lack of alternatives presented from the City of Sanibel, Commissioner Judah asked Assistant County Attorney David M. Owen to clarify that, due to the lawsuit increasing the toll from three dollars to six dollars, the City of Sanibel will receive a greater amount of money in their legal entitlement of 21% of the surplus toll revenues. Commissioner Judah further commented that the City of Sanibel could defray the financial damages to the local businesses with the money received from the surplus toll revenues. Attorney Owen stated that the surplus toll revenues can only be spent on legally sustainable municipal purposes, not on private businesses, and it would be the burden of the City of Sanibel to justify spending the surplus toll revenue on private businesses. In response to Commissioner Coy's question on the ability for the City of Sanibel to redirect the 21% of the surplus toll revenue back to the county, Attorney Owen affirmed that doing so could lower the toll charges. Commissioner Albion encouraged the City of Sanibel to work with Lee County to receive further funding from the federal government through the variable pricing program (VPP), which would also lower costs. The Board agreed to pursue both options. Commissioner Albion recommended that, under the Surface Transportation Bill, Lee County access the ferry service for employees of Sanibel. Commissioner Judah moved for Staff to write a letter to the Sanibel City Council, recommending that the City of Sanibel redirect its 21% surplus tax revenues to Lee County for the purpose of reducing toll costs, which were increased by the lawsuit and time delays. The motion was seconded by Commissioner Coy. Commissioner Albion requested that Administration provide an analysis of what kind of reduction could be realized with the use of those dollars; and added that the letter should allow the City of Sanibel to extend beyond the surplus amounts and give the city an opportunity to, for the first time, fund some of the costs for the bridge. The motion was called and carried. Commissioner Albion requested a report from DOT, in two weeks, in regard to Sanibel's interest in the VPP and the possibility of ferry service.

WALK-ON ITEM NO. 2

4. COMMUNITY DEVELOPMENT

ACTION REQUESTED:

Execute the grant award agreements for Lee County State Housing Initiatives Partnership (SHIP) 2004 Hurricane Season Disaster Mitigation and Recovery Funding Cycle, for the following applicants:

<u>Lee County Housing Development Corporation, 18 houses:</u>	\$237,000.00
<u>Cape Coral Housing Rehabilitation and Development Corporation, 2 houses:</u>	\$30,000.00

WHY ACTION IS NECESSARY:

The Chairman must sign the grant award agreements.

WHAT ACTION ACCOMPLISHES:

Allows the county to enter into grant award agreements with non-profit affordable housing providers serving hurricane victims. (#20041322-Planning)

REASON FOR WALK-ON:

Requested by Commissioner Albion.

Commissioner Judah moved the item, seconded by Commissioner Coy. Commissioner Albion briefly reviewed the item. The motion was called and carried.

WALK-ON ITEM NO. 3

8. NATURAL RESOURCES

ACTION REQUESTED:

Award B-04-35, Hurricane Debris Removal, for the Natural Resources Division, to the low bidder meeting all bidding requirements, American Environmental Contractors, for a not-to-exceed amount of \$130,950.00, with a final project completion by December 31, 2004; and authorize Staff to process the change orders, in the not-to-exceed amount of \$169,050.00, for additional work as needed.

WHY ACTION IS NECESSARY:

The Board's approval is required.

WHAT ACTION ACCOMPLISHES:

To select a contractor who will furnish the specified equipment with operators, laborers, and superintendents to perform the removal and disposal of vegetative and man-made debris, from creeks, canals, and waterways located in and around Lee County. (#20041335-Natural Resources)

REASON FOR WALK-ON:

Due to expiration of funding, and degradation of water quality and restriction to navigation, time is a critical factor regarding award and commencement of work.

Commissioner Janes moved the item, seconded by Commissioner Coy, called and carried.

COMMISSIONER ITEMS

SANIBEL CAUSEWAY - Commissioner Janes stated that discussions delay the process and cost the county more money; and suggested that it is time to move forward with the reconstruction of the Sanibel Causeway.

HORTICULTURAL DEBRIS - Commissioner Coy recommended that more notification and information be provided to the State regarding federal government funding for disaster relief so that Lee County continues to receive necessary money for horticultural debris clean-up. Commissioner Coy moved that a letter be sent to Florida Governor Jeb Bush, the Florida Senate Majority Leader President James E. King, Jr., the Florida House of Representatives Speaker Johnnie Byrd, and the Regional FEMA Director Kenneth Burris, Jr., seconded by Commissioner Judah. Commissioner Janes expressed support for the motion. The motion was called and carried.

ABSENTEE BALLOT ERROR - Commissioner Coy stated that a question on the Absentee Ballots was misprinted, which changed the meaning of the question. Assistant County Attorney David M. Owen advised that the issue has been corrected, as the Supervisor of Elections has already taken legally sustainable action; and stated that, in addition to the correction postcards that have been sent out, citizens who have voted can revote on that issue. Supervisor of Elections Sharon Harrington stated that, despite five people proofreading the ballot, that one mistake was overlooked; reviewed the process and options available; and explained what has already been done to correct the measure. In response to Commissioner Janes' related concern of citizens directed to vote outside of their precincts for early voting, when it is not allowable by Florida law, Ms. Harrington stated that voting outside of the precinct was an exception for early voting, and that voters will not be permitted to vote on issues outside of their districts; and further clarified that voters must vote in their precincts on November 2, 2004.

ZONING CASE TIMEFRAME - Commissioner Judah inquired from the County Attorney's Office on the ability to place a specific timeframe for applicants to give to the governing body when using Continuance by Right. Assistant County Attorney Timothy Jones informed the Board that the Land Advisory Committee should review the request and make a recommendation. Commissioner Albion noted that emergency situations should be an exception to the timeframe.

DENSITY IN COASTAL HIGH HAZARD AREAS - Commissioner Judah requested appropriate language in the Comprehensive Plan (Comp Plan) to allow the Board to identify proposed increases in density in the coastal high hazard areas and discourage it; noted that the Comp Plan contains language pertaining to amendments to the Comp Plan, not zoning cases; and directed the County Attorney's Office to formulate the appropriate language in an amendment for the Board to consider during the next round of amendments. Discussion ensued concerning the proper committees and departments that would participate in creating this amendment. Commissioner Albion requested an update in two months.

LEE COUNTY INTEROPERABLE - Commissioner Albion congratulated Department of Transportation Director Scott M. Gilbertson for the DOT's acceptance into the Electric Toll Collections (ETC) Interoperability Program; and requested that the signs regarding money saved with variable pricing get updated.

COUNTY LANDS RECOGNITION - Commissioner Albion congratulated County Lands Director Karen L. Forsyth for County Lands Division's winning of a 2004 Achievement Award, from the National Association of Counties, and thanked the division for their hard work and cost savings for the community.

COMMITTEE APPOINTMENTS

Commissioner Coy moved to reappoint Eva Ramage to the **PALMONA PARK LIGHTING UNIT**; and reappoint Cliff Paxson to the **CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS**, seconded by Commissioner Janes, called and carried.

Commissioner St. Cerny moved to reappoint Annette M. Popovich to the **COMMUNITY ACTION AGENCY/NEIGHBORHOOD DISTRICT**, seconded by Commissioner Coy, called and carried.

Commissioner Judah moved to reappoint Irma Reyes to the **HARLEM HEIGHTS LOCAL NEIGHBORHOOD DISTRICT**, seconded by Commissioner Janes, called and carried.

Commissioner Albion request a motion to reappoint Jeff Brim and Willard Baker to the **BICYCLE/PEDESTRIAN ADVISORY COMMITTEE**, and Joanne Fowler to the **CONSERVATION LAND ACQUISITION & STEWARDSHIP**. Commissioner Janes so moved, seconded by Commissioner Coy, called and carried.

COUNTY MANAGER ITEMS

County Manager Donald D. Stilwell had nothing to offer.

COUNTY ATTORNEY ITEMS

Deputy County Attorney Robert W. Gray had nothing to offer.

The Chairman adjourned the meeting at 10:55 a.m.

ATTEST:
CHARLIE GREEN, CLERK

Deputy Clerk

Chairman, Lee County Commission