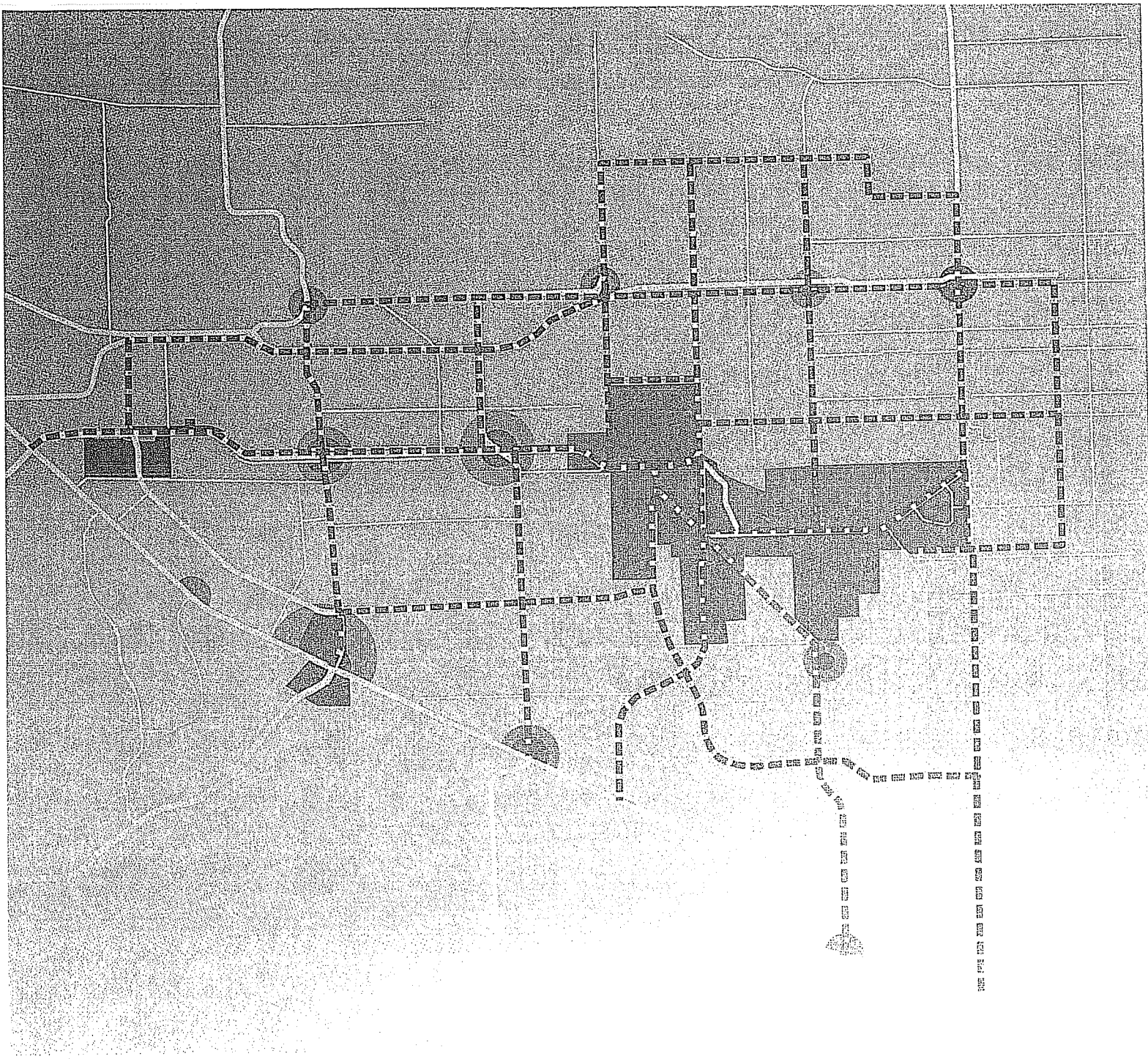


LEHIGH ACRES COMPREHENSIVE PLANNING STUDY

Executive Summary

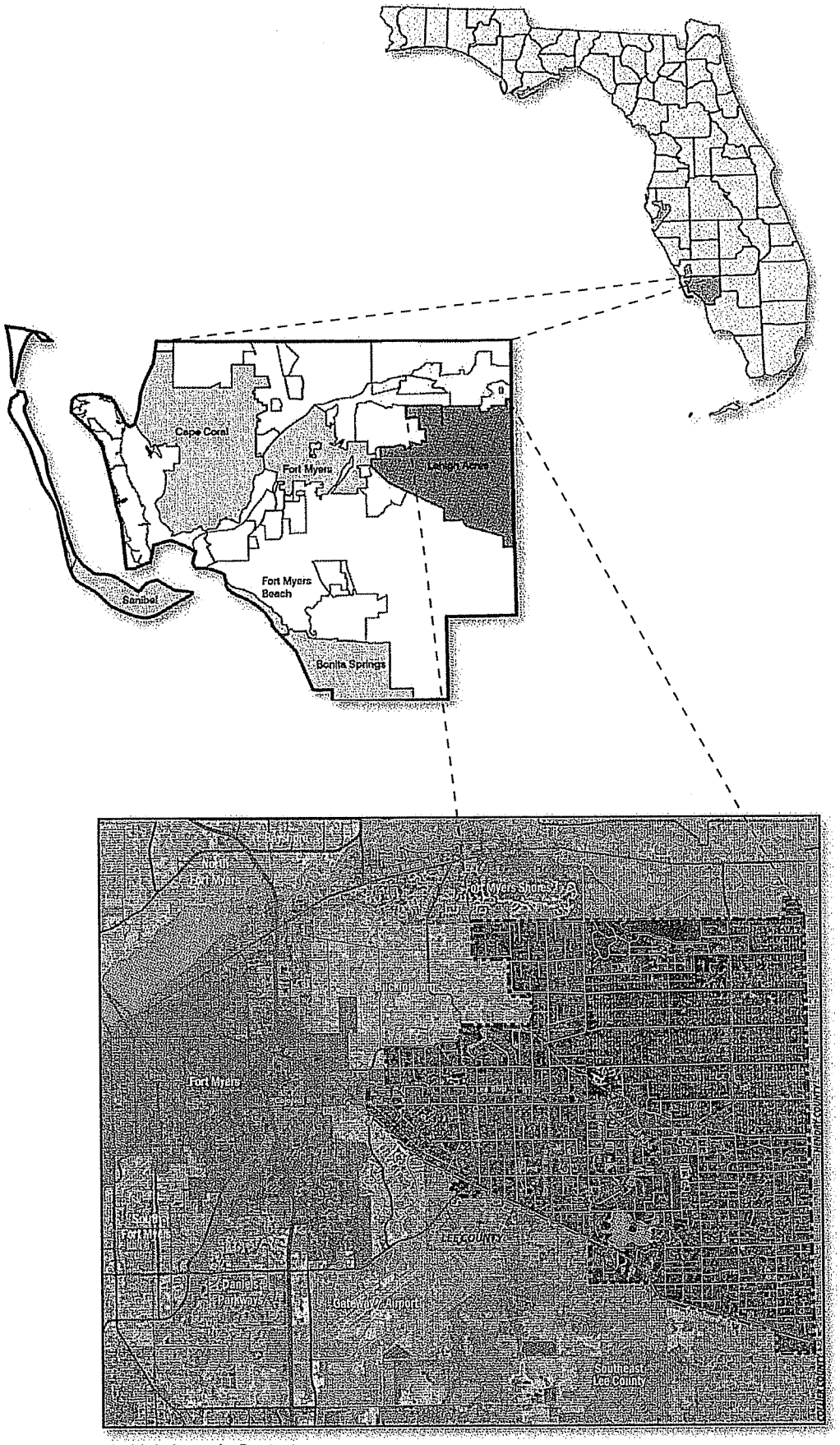
Lee County

Community Development Department

Prepared by

Wallace Roberts & Todd, LLC

Final - March 2009



Lehigh Acres in Context

Background

Lehigh Acres, located in the northeast quadrant of Lee County, is one of the largest platted subdivisions in the country. Remote and isolated from the County's urbanized area, for decades this 96-square mile subdivision developed at a slow pace. However, its very remoteness, together with a lack of infrastructure investment, kept the land values low enough to make the area comparatively affordable and attractive to the County's working families. As a result, in the late 1990s and early 2000s, residential development accelerated (while remaining scattered over the large land area), with the volume of traffic in and out of Lehigh Acres mushrooming and crime and emergency response times becoming a problem due to the isolation of many of the homes and the discontinuity in the road network. As growth is expected to continue, the absence of the facilities and infrastructure to support that growth means that Lehigh Acres will reach a crisis point sooner or later.

To respond to this challenge, Lee County, working with Wallace Roberts & Todd, LLC (WRT) and a team of subconsultants, launched a process to prepare a new community plan for the long-term development of Lehigh Acres. The plan, summarized in this document, is an effort to identify actions and tools that will allow the County to alleviate the present problems experienced by Lehigh Acres, and, over time, to make the community more sustainable and more self-sustaining.

Study Area

The study area boundaries for the Lehigh Acres Comprehensive Planning Study coincide with those established in the Lee County Comprehensive Plan (the Lee Plan) as the boundaries of the Lehigh Acres Planning Community. The Lehigh Acres Planning Community comprises the original Lehigh Acres development, located south of Township 43 South, generally north of SR 82, and east of Buckingham Road/the Buckingham Rural Community Preserve to the eastern Lee County line. Retaining the present boundaries for planning purposes will help facilitate integration of this study into the framework of the Lee Plan.

Project Purpose

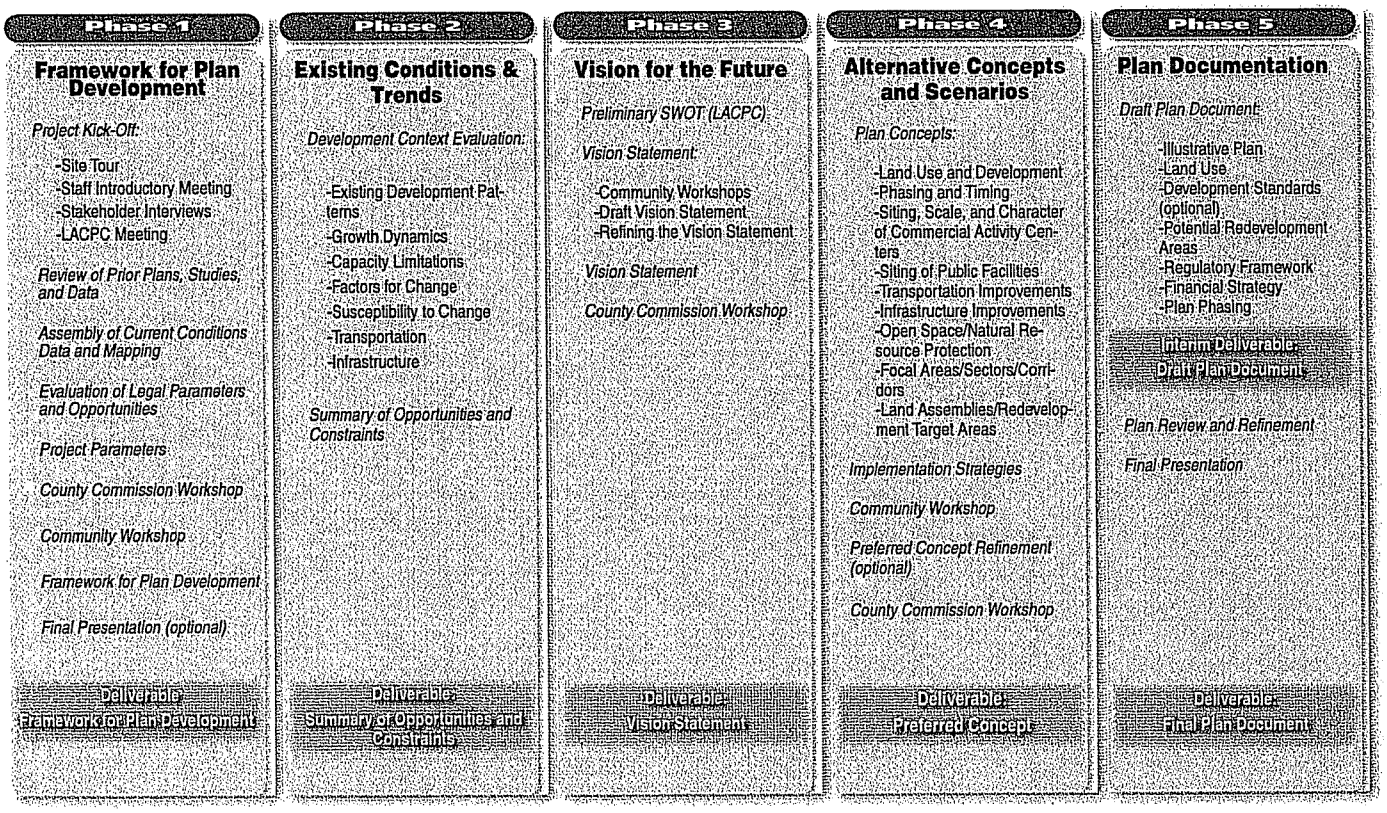
The overarching purpose of this study is to develop a proactive, comprehensive and strategic program of action to address land development, redevelopment, infrastructure and service issues so that Lehigh Acres can become a more balanced, and sustainable community.

Preparing a plan that meets the requirements for sustainability, given the challenges and limitations facing Lehigh Acres and the current fiscal climate in Florida, is not an easy task. However, four critical components, identified during the planning process, are necessary to make the plan successful. These are:

1. A practical physical plan.
2. Prioritized actions and programs.
3. Necessary regulatory tools and financial resources.
4. A public and political commitment to implement the plan.

Process and Community Involvement

This document was prepared over a nearly three-year period as part of a process that included five phases of work. Multiple opportunities for involvement by the community were provided throughout the planning process, and are listed below. All meetings were extensively advertised through the local newspapers and posted on the County website. The Plan's public involvement activities were also announced at meetings of the Lehigh Acres Community Planning Corporation (LACPC)—the community-based organization who steered the process and who, working with Lee County staff, served as the interface between the Consultant and the larger Lehigh Acres community—and posted on the LACPC website. Newspaper coverage typically followed each of the activities. Interim and final products of each phase, as well as corresponding presentation materials, were made available on both the County and the LACPC websites.



Planning Process

Community Involvement Activities

- September 2006: Project Kickoff, including 2 days of community stakeholder meetings and an interactive pre-visioning session with the LACPC.
- March-April, 2007: Community visioning sessions (4).
- June 2007: Community forum to present the draft Vision Statement.
- August 2007: Informational presentation to the Lee County Board of County Commissioners Management and Planning Committee.
- September 2007: Informal presentation to the Lehigh Acres Chamber of Commerce on the status of the plan.
- January 2008: LACPC workshop on alternative concepts.
- February 2008: All-day Open House on alternative concepts.
- October 2008: Public presentation of draft plan.
- December 2008: Summary presentation of the draft plan to the Board of County Commissioners Management and Planning Committee.
- January 2009: Public presentation of final draft plan.
- February 2009: County staff summarized and discussed the plan with the Lehigh Acres Community Council.
- February 2009: Anticipated endorsement of the plan by the LACPC.

Project Parameters: Key Issues

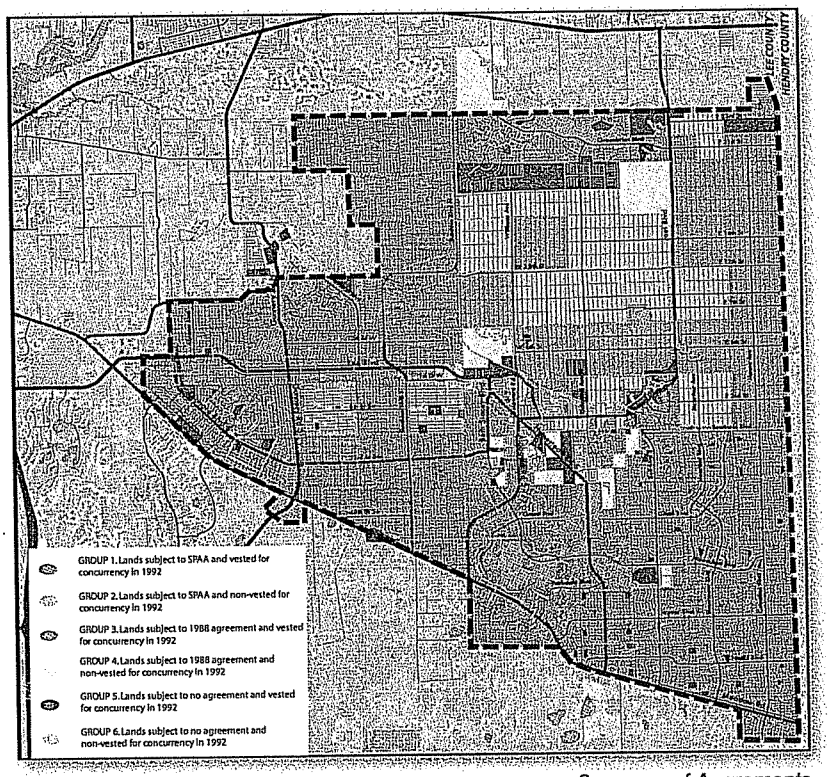
Lehigh Acres started as an 18,000-acre cattle ranch that in the mid 1950's was purchased as a tax shelter by Chicago businessman Lee Ratner. He and his partners created the Lee County Land & Title Co. (later renamed Lehigh Acres Development Corporation) to subdivide the land into quarter-acre and half-acre lots and market them for sale as part of a huge retirement community. In the subdivision process, very little land was set aside for commercial, parks, and other uses—certainly not nearly enough to adequately serve an area of 100 square miles where development at buildout was eventually expected to reach between 135,000 and 150,000 housing units. Roads and infrastructure were marginal as well.

None of these issues were a problem until the late 1990's, when, unexpectedly, development accelerated. Certificates of Occupancy (CO's) for new residential structures in Lehigh Acres jumped from 528 in the year 2000 to over 6,200 in 2006. Traffic, crime, water quality, and other problems began to afflict Lehigh Acres—not unlike other rapidly growing communities, but in Lehigh Acres, these factors were exacerbated by the unique conditions and built-in deficiencies of the development pattern. Today, while the nationwide economic downturn clearly has slowed the pace of development in Lehigh Acres in the near term, the underlying problems remain, and are only likely to worsen whenever the market picks up again. Many of these problems are interrelated, and have significant effects on the physical and social welfare of the community.

Over the years, various proposals have been made to resolve the issues in Lehigh Acres. Unfortunately, most of these efforts fell short of addressing the underlying problems, or faltered before they could succeed. For this reason, Lee County has undertaken the mission of preparing a strategic action plan focused on land development, redevelopment, infrastructure and services, with an eye to making Lehigh Acres a sustainable community in the long term. The first step in the preparation of the plan was to identify the key constraints and opportunities. The results of this task revealed the following to be the main issues that the plan must address:

Legal Constraints

No discussion of possible strategies for dealing with development or redevelopment in Lehigh Acres can proceed without consideration of all factors related to private property rights. The consultant team conducted an exhaustive search and analysis of various legal and regulatory issues and instruments that have an influence on development in Lehigh Acres. The review of the background facts indicates that there are three agreements and four related government actions that affect vested rights issues in Lehigh Acres, which should be regarded in planning the future of this community.



Summary of Aggrements

In simple terms, the examination of these various decisions and agreements suggests that the majority of land in Lehigh Acres was platted and vested many years ago, limiting the ability of the County to restrict development of single family residential homes and duplexes on these lots on the basis of density, intensity, use, or transportation concurrency.

However, this development is required to meet all other land development regulations, including those regarding on-site sewage disposal systems and water wells. In addition, the Lee Plan grants that any subdivision approval may be revisited if it were demonstrated that a new peril exists—i.e., a peril unknown at the time of approval—to the public health, safety or welfare of the residents.

Regulatory Framework

All development in Lee County is managed through the Lee County Comprehensive Plan, also referred to as the Lee Plan, and its accompanying Land Development Code. This plan establishes a vision for the County as it is expected to be in the year 2030. It is noteworthy that those portions of the Lee Plan that pertain to the vision for the Lehigh Acres Planning Community in the year 2030 concede that the challenge of altering course is such, that much may not change in the next 12 years. Similarly, the goals, objectives, and policies in the current Lee Plan that specifically concern Lehigh Acres acknowledge and comply with the legal constraints pertaining to vested rights, while attempting to establish a framework for orderly growth. At the core, however, there is an inherent disconnect between the character described in these policies and the character that may be achievable due to these legal constraints and the fundamental flaws in the subdivision design.

Future Land Use Map

The Future Land Use Map designates the majority of the land in Lehigh Acres as either Central Urban area or Urban Community. While the platted pattern and the existing stipulated agreements presumably will prevent certain areas designated under either of these two categories from actually being built to the maximum density specified in the Lee Plan, the delivery of necessary infrastructure will be become an increasingly critical issue if development is not more strategically directed. This challenge is compounded by standing exemptions allowing some sections of Lehigh Acres to not meet transportation concurrency.

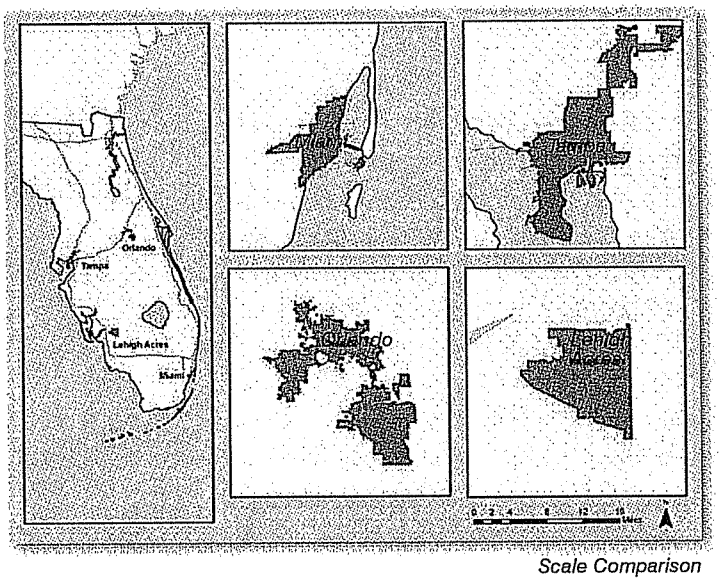
Zoning and Land Development Regulations

The preponderance of One-Family Residential (RS) zoning in Lehigh Acres reflects the intent of the original plat to create a "bedroom community," and is also sensitive to the vested rights and related stipulations that apply to development in Lehigh Acres. In addition to the single-family zoning there are significant sectors zoned for multifamily uses, in which duplexes tend to be the predominant use. The concentration of these uses, coupled with the generally inferior design quality of the development, has raised concerns of overcrowding, littering, and crime, among other impacts.

Commercial zoning is concentrated in the Central Urban area or along major roadway corridors, but the amount of land designated for this use is very limited relative to the extent of developable area, and suited primarily for automobile-oriented "strip" commercial development.

Community Scale

Although unincorporated, Lehigh Acres is the second largest community in Lee County in land area (second to Cape Coral). The community encompasses 61,372 acres (approximately 96 square miles), or about 8 percent of the total land in the County, but it is home to less than 75,000 permanent residents—less than 12 percent of the County's population. The present overall population density is just above 1.2 permanent residents per acre. By comparison, the City of Miami, with over 400,000 people as of 2006, covers only 55 square miles, and the City of Orlando, with some 202,000 people, has a land area of 101 square miles.



Scale Comparison

While the scattered development pattern that the low density in Lehigh Acres produces is an unquestionable challenge for the provision of urban services today, the cost of serving this vast land area in the future, even at denser populations, will be exorbitant.

Shifting Demographics

Between 1990 and 2000, the population of Lehigh Acres grew by about 146%. By 2003, the functional population (i.e., permanent + seasonal populations) was estimated at 44,575, a rate of increase of about 8.33 percent per year since 2000. Similarly, the U.S. Bureau of the Census American Community Survey estimates the 2006 population at about 67,863, a growth spurt of over 26,000 people between 2003 and 2006.

Hispanics are one of the fastest-growing segments of the population. According to the U.S. Census Bureau's American Community Survey (ACS), the share of Hispanics/Latinos in Lehigh Acres was estimated to have grown to 23.4 percent of the total population by 2006 (compared to 16 percent of the overall population of Lee County). The 2006 ACS indicates that Lehigh Acres is not only becoming more diverse, but also becoming younger. The median age in 2006 was 34.1 years, down from 38 years in 2000.

Although Lehigh Acres started as a retirement community, the area has been attracting families with children and younger people in significant numbers, due to its affordability relative to other areas of Lee County. This demographic shift raises new challenges related to facility and service demands that must be considered in the planning process. Finding suitable sites for schools, parks, and other facilities is already a hardship, and will become more so as the population continues to grow. In addition, with more working-age residents, the lack of employment centers within the community will only continue to intensify road congestion, increase commute times, and undermine quality of life.

The current market conditions have slowed down growth in Lehigh Acres over the past two years This slowdown is expected to continue through 2009—and perhaps 2010—and represents a window of opportunity to set a different course for the future of Lehigh Acres, which was improbable a few years ago.

Land Fragmentation and Use Imbalances

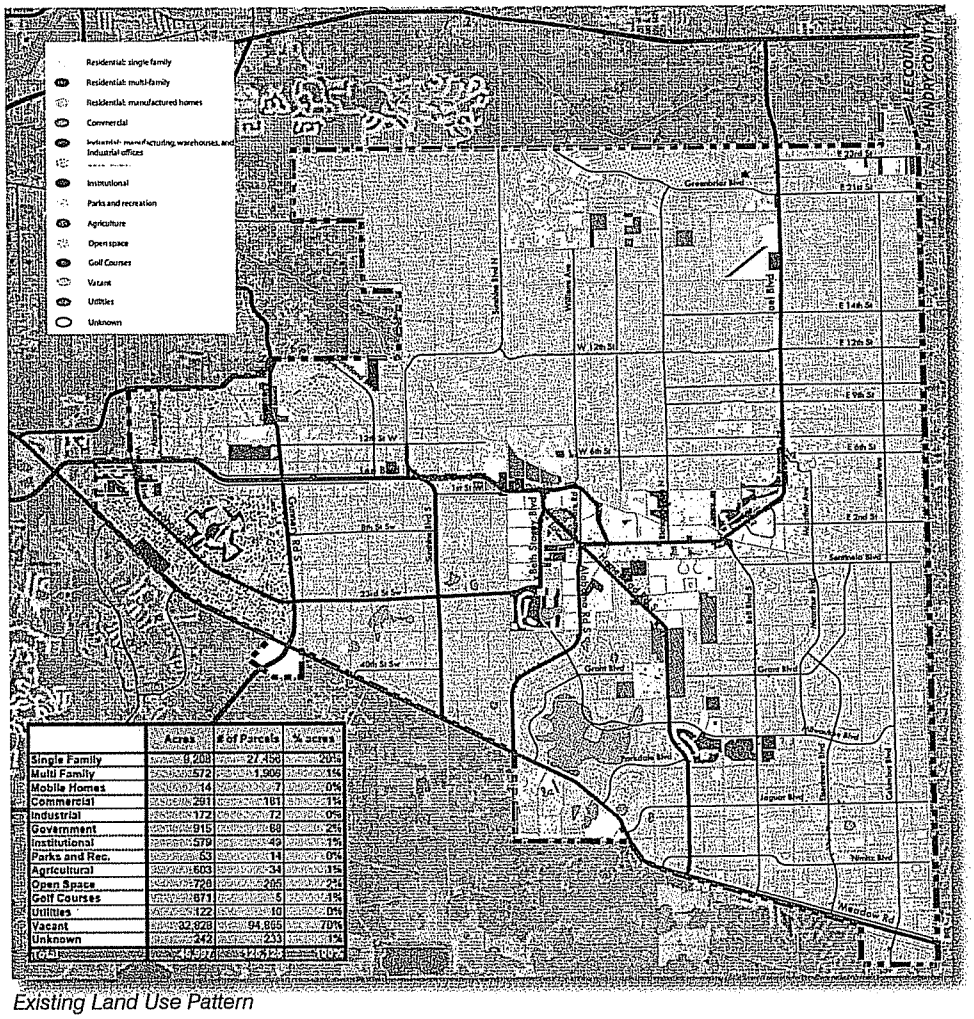
Two traits qualify the pattern and distribution of land uses in Lehigh Acres: first, there is a substantial amount of vacant land (approx. 32,828 acres), the bulk of which is in the form of small platted lots (1/4 to 1/2-acre each); second, of those parcels that are developed, the majority are predominantly in single family residential use, and highly scattered over a vast expanse of land. The most sparsely developed sectors are located in the southeastern and northeastern parts of the study area. Very limited commercial development occurs in a pattern on narrow strips along the primary, central corridors: Lee Boulevard, Homestead Road South, and Joel Boulevard.

Vacant Residential:	32,311 net acres (93,742 parcels)
Vacant Industrial:	104.2 net acres
Vacant Institutional:	0.5 net acres
Vacant Commercial:	422.3 net acres
Total Vacant Acreage:	**32,828 net acres***

(*out of approx. 46,423 net acres within Lehigh Acres as a whole)

Vacant Land Distribution (by Intended Use)

The amount of nonresidential, supplementary uses in Lehigh Acres is minimal. Key factors hindering the development of these uses include the lack of sizable parcels, and the limited area serviced by central water and sewer, which are typically necessary to support such uses. Fragmented ownership is another challenge to assembling land for these uses. However, the current real estate market may provide some opportunities, particularly in the current market, where large development companies and builders own clusters of vacant lots.



	Acres	# of Parcels	% acres
Single Family	8,208	27,456	20%
Multi Family	572	1,906	1%
Mobile Homes	14	7	0%
Commercial	291	161	1%
Industrial	172	72	0%
Government	915	88	2%
Institutional	579	49	1%
Parks and Rec.	53	14	0%
Agricultural	603	34	1%
Open Space	728	205	2%
Golf Courses	671	5	1%
Utilities	122	10	0%
Vacant	32,828	94,865	79%
Unknown	242	233	1%
TOTAL	41,097	125,225	100%

Existing Land Use Pattern

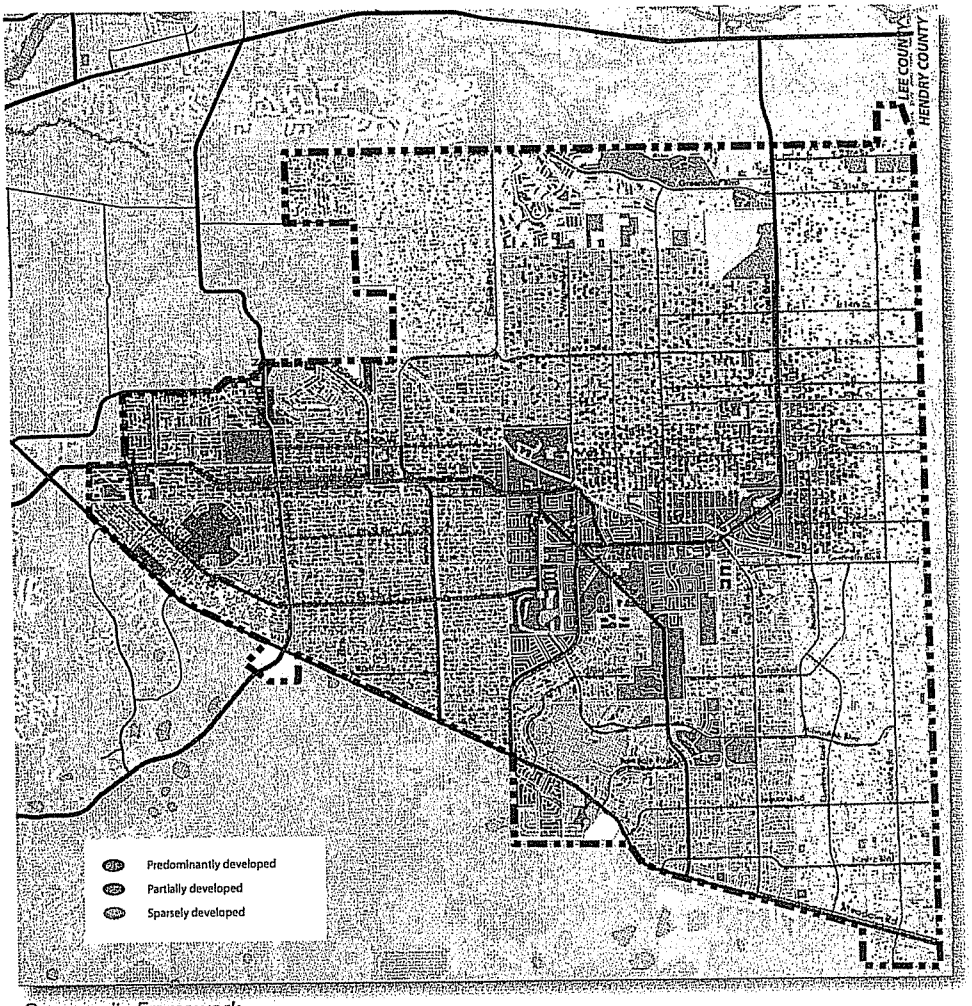
Lack of Community Structure

There is no discernible road hierarchy (with the exception of arterials) or easily identifiable community structure in Lehigh Acres. The present dispersion of development and imbalanced mix of land uses compound the challenge to create such a structure. The "neighborhoods" (subdivisions) that exist are in the scale of small-sized suburban communities. These neighborhoods are predominantly residential in use but, today, many of them are still largely undeveloped, causing them to lack a discernible visual identity and functional cohesion.

More noticeable from the area-wide land use pattern is an incipient community framework based on densities of development and level of service availability, and consisting of three major sectors, bands, or tiers. The first sector can be characterized as the "urban core" of Lehigh Acres, which has had time to develop more fully and is served by a complete or near-complete array of public services—central water and sewer, urban roads, schools, libraries, and parks, etc. The second band is less developed, but it is evolving gradually into a suburban character area. Services are either available or accessible/extendable from the core. The third band is sparsely developed and few or no services exist or are planned to be extended in the foreseeable future.

Water Supply and Quality Issues

There are nearly 22,000 water wells in Lehigh Acres. The concentration of domestic wells in the area, all pumping from the Sandstone Aquifer results in seasonally low water levels and contributes to well failures and water quality deterioration. Population increases that result in construction of additional domestic wells each year exacerbates these problems. In addition, continued development of the northern part of Lehigh Acres is projected to produce excessive stormwater runoff into the Bedman and Hickey Creeks, threatening serious flooding and water quality problems. The ECWCD Comprehensive Water Resources Plan projects a need of 3,700 acres of additional stormwater management facilities when Lehigh Acres is built-out.



Community Framework

There are also over 21,000 onsite septic treatment and disposal systems (OSTDS) in Lehigh Acres, most of which have been permitted through a variance process. At the current low density of development, this may not raise concerns. However, if no significant expansion of the centralized sewer were to occur, there could be tens of thousands of additional OSTDS in Lehigh Acres over the next 20 to 40 years, and the concentration of such systems eventually might pose a health and environmental threat. Septic systems not only have a finite capacity to retain phosphorus, but at concentrations of more than 2 systems per acre, studies have shown that the risk of groundwater contamination is magnified. Today, permits for OSTDS are reviewed on an individual basis, and there is no system in place to track cumulative effects.

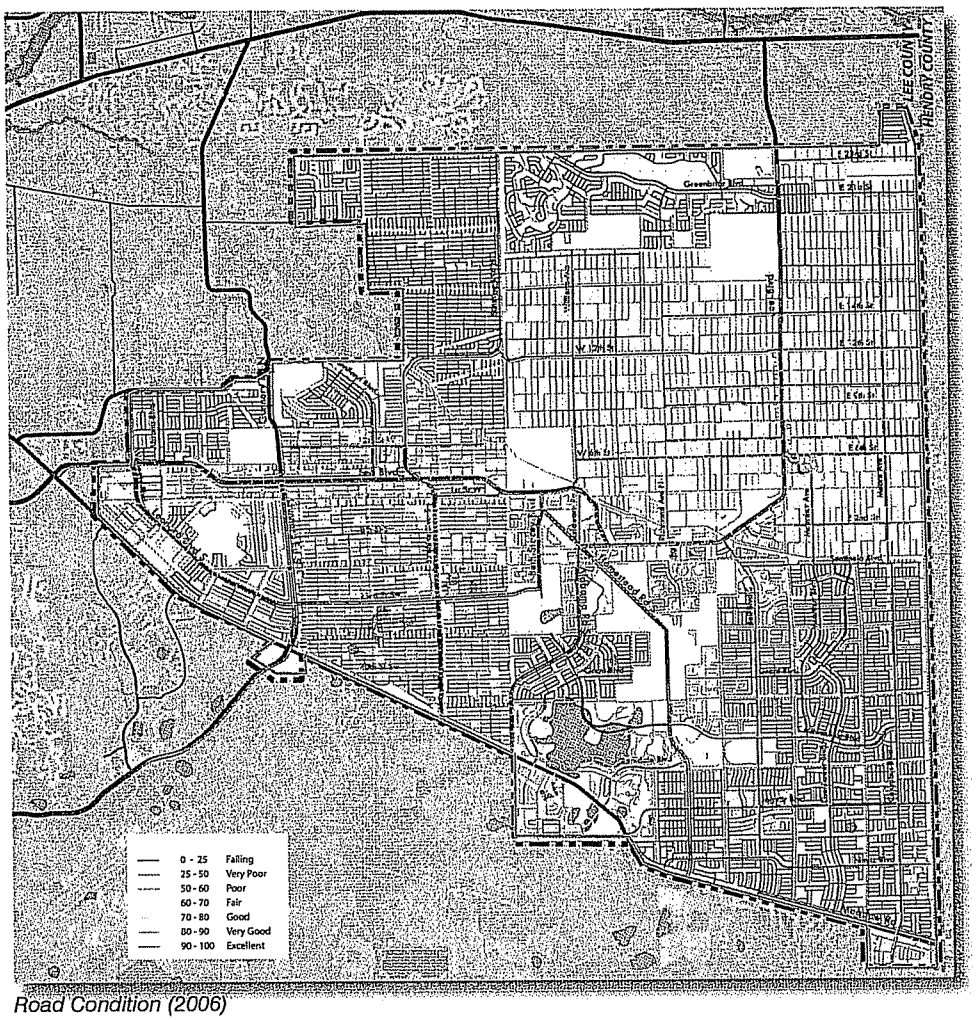
Transportation Network Deficiencies

Lehigh Acres has limited connectivity to the rest of the County and the regional road network. Lee Boulevard, SR 82, and Gunnery Road are the only east-west and north-south arterials that link, or cross, Lehigh Acres, creating congestion on these roads due to lack of alternatives.

Many local streets terminate at canals, disrupting the network flow and hindering continuous circulation. The number of bridges is limited relative to the large number of road segments and canals. The Sheriff's Department and the Fire District have reported that emergency response times are increased due to the lack of street continuity and difficulty of navigating a roadway network that is not intuitive.

In addition, many of the local roads do not meet current County standards for right-of-way width, and are in extremely poor condition due to their age, initial construction quality, and lack of regular maintenance. Over 50% of all roads, and over 70% of local roads in Lehigh Acres are classified as in "poor" to "failing" condition by the Lee County Department of Transportation. In 2006, the cost of resurfacing every street in need within Lehigh Acres was estimated to exceed $70,000,000.

Compounding the mobility challenges, infrastructure for alternative transportation modes is severely limited. While sidewalks and bikepaths (mostly in the form of paved shoulders) exist, they are fragmentary and infrequent at best, Transit service to and within Lehigh Acres is similarly limited.



Road Condition (2006)

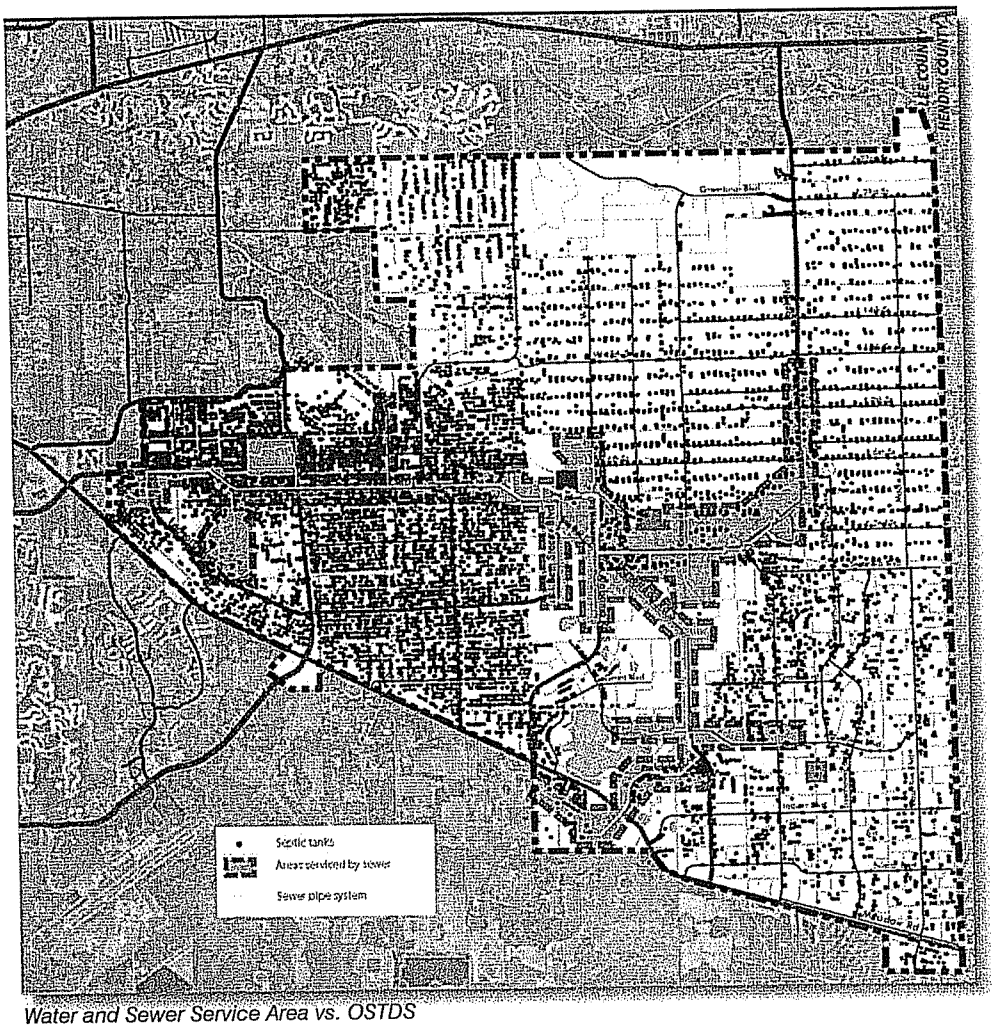
Infrastructure Deficiencies

Presently, public water and sewer are available only to portions of Lehigh Acres. Only about 8,700 acres—or 14 percent of the total land, primarily in the older community core—are served by central water and sewer, which are provided by the Florida Governmental Utility Authority (FGUA).

FGUA's FY 2008-2012 Capital Plan includes approximately $92 million to complete thirty-eight capital projects necessary to keep up with projected growth in Lehigh Acres. This Five Year Plan was revised at the request of Lee County, to integrate strategies and costs associated with implementing a septic tank replacement program. The study envisions a major expansion of the wastewater collection, treatment and disposal system. Over the next five years, FGUA's proposed water and sewer projects could reach as many as 12,000 properties, including many lots within the central service area that continue to rely on pre-existing septic tanks and private water wells. However, the probability of implementing FGUA's plan remains uncertain, partly because no consensus exists regarding the current magnitude of the water and sewer system capacity problem, and because of public opposition to rate increases and connection fees.

Community Services and Facility Deficiencies

There are five fire stations in Lehigh Acres. Two of these—one at Milwaukee and Bell, the other one on Sunshine Boulevard—are new stations, completed within the past year, financed by impact fees. Currently, underserved



Water and Sewer Service Area vs. OSTDS

areas include the northeast and northwest quadrants of Lehigh Acres. The average response times to locations in this area are now close to seven minutes. This has a significant impact on homeowner insurance ratings for homes located in these areas. This is compounded by the fact that the majority of Lehigh Acres is considered as a high to extreme fire-hazard area.

For law and order, Lehigh Acres relies on the Sheriff's Office. Over the past 10 years, Lehigh Acres residents have expressed a growing concern related to public safety in connection with increases in criminal activity. With a limited force to cover a large and still largely developing area, burglary in new, unoccupied homes and construction sites has become common, as are drug-related activities. Criminal activity is facilitated by the fact that the residential units are very dispersed in some sectors of the community.

Lehigh Acres is well served today by regional and community parks on a level-of-service basis (i.e., standard of 62.5 acres per 1,000 persons). However, the County's "desired" standard has not been met since 2007, and will not meet it through 2012—even with the addition of planned facilities. There are spatial deficiencies due to the fact that the existing parks all tend to be located in the urban core of the community. Lee County does not require nor provide neighborhood parks, and many areas of Lehigh Acres are distant from the existing recreational facilities. In particular, the north, east, and southwest sectors of Lehigh Acres lack active recreation facilities.

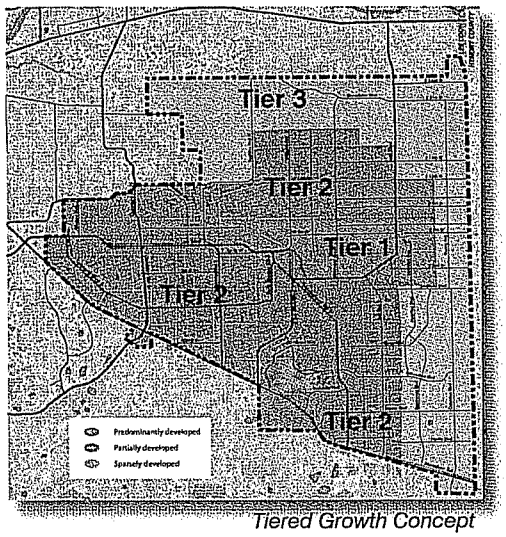
Most other existing community facilities (hospitals, libraries, schools) tend to be clustered along the main arterial corridor, Lee Boulevard, and the core area around Homestead Road. This concentration leaves large areas of Lehigh Acres lacking facilities, and requires driving, sometimes long distances, to access existing services. Land assembly for these facilities has been a challenge due to the small parcel sizes and fragmented property ownership.

Trends Evaluation

Estimates of the potential future population of Lehigh Acres were prepared as the basis for projecting future commercial, institutional and other land use needs.

Taking into consideration the existing constraints affecting Lehigh Acres, a 2030 base population of approximately 166,000 (an increase of about 84,500) permanent residents is projected with a corresponding population density of nearly 1,700 persons per square mile.

Based on present zoning, the bulk of the projected population growth could be easily accommodated within development Tiers 1 and 2, which combined have an additional population capacity of approximately 152,000 persons. If all growth were directed into these two tiers, their buildout would be achieved in 25-30 years.



Tiered Growth Concept

	Area 1	Area 2	Area 3	Totals
Estimated current population	44,601	23,435	13,213	81,249
Estimated additional population capacity	50,150	102,203	144,984	297,337
Total potential population capacity	94,751	125,638	158,197	378,586
Additional dwelling units (capacity)	**17,116**	**34,881**	**49,483**	**101,480**

Estimated Additional Population Capacity (at full buildout)

Today, limited nonresidential development is distributed over the older residential service area in Lehigh Acres, while areas outside the water service boundary are almost entirely without nonresidential development. The infrastructure constraints, if unmitigated, will lead to the intensification of both residential and nonresidential development within the existing water service boundary. The total projected deficit of commercial and industrial land, shown in the following table, may never be completely met within Lehigh Acres, particularly for regional-serving commercial retail and intense employment generators.

Acreage of current developed commercial land	297
Additional undeveloped commercial acreage	710
2030 projected commercial land acreage required	1,565
Current deficit of commercial land acreage	**558**
Current developed industrial land acreage	173
Additional undeveloped industrial land	84
2030 projected industrial land acreage required	701
Current deficit of industrial land acreage	**444**

Estimated 2030 Demand for Commercial and Industrial Land

The Lehigh Acres Vision Statement

Between March 21 and April 28, 2007, four (4) community forums were held with Lehigh Acres residents. Based on the aspirations and concerns publicly expressed by these residents, the long term vision for Lehigh Acres is:

> *"...to become a "Sustainable Community of Choice," a community that is safe, affordable, connected, well-served, livable, attractive, and populated by a diverse and engaged citizenry."*

This vision has informed and inspired every aspect of the Community Plan. The following are the key elements of the long-term vision for Lehigh Acres:

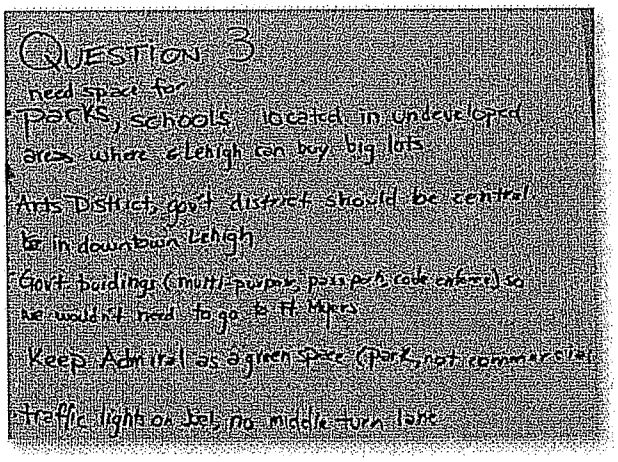
Managed / Balanced Growth: Encourage growth in areas where a full range of public services is in place or planned, and discourage or slow growth in outlying areas lacking in water, sewer and other basic infrastructure. Diversify the land use pattern and strengthen the local economy and tax base by reserving land and retrofitting existing land use patterns to incorporate adequate employment, commercial and mixed-use development. Strengthen downtown and other centers of activity and promote sound land uses along important highway corridors.

Community Character: Enhance community identity and pride, raising the bar for development quality, architectural character and quantity and quality of landscape materials. Integrate parks, open space, enhanced canal corridors and greenways as community form-givers and amenities to enhance quality of life.

Natural Resource Protection / Restoration: Protect the quality and quantity of groundwater by reducing the impact of septic systems and by providing for adequate groundwater and aquifer recharge. Promote a "greening" of Lehigh Acres, emphasizing the use of native landscape species.

Efficient Transportation: Upgrade the condition and capacity of the local road system, improving connectivity and applying principles of access management along major roadway corridors. Promote alternatives to auto reliance through transit, and improved networks of sidewalks and pedestrian and bicycle trails as part of community greenways.

Full Array of Public Services and Facilities: Expedite the staged extension of water and sewer systems, connect lots previously served by on-site septic and wells, and discourage additional development reliant on on-site well and septic systems. Reserve land and promote intergovernmental coordination for the development of local schools, libraries, recreation centers and other facilities and services necessary for a sustainable community of choice. Act in multi-faceted ways to protect public safety, including maintaining adequate emergency response times, ensuring necessary fire (water) flows, avoiding undue concentrations of multi-family and rental housing and by providing a range of engaging activities for children, youth, adults and seniors.



Concept Plan

The current conditions and pattern of development in Lehigh Acres appear to be incompatible with the future community characteristics articulated in the Lee Plan as currently adopted, and is inconsistent with the new Vision Statement developed by the community. Without action or change of course—focused efforts to extend infrastructure, acquire land for community facilities, and spur commercial development—a sustainable future will more than likely be unattainable for much of the sparsely developed areas within Lehigh Acres in any foreseeable time frame, given the current conditions, impediments created by small parcelization, and cost prohibitions.

In an effort to bring reality closer to the vision, the concept plan establishes a framework for decision-making geared, fundamentally, at downscaling the urbanizing area of Lehigh Acres into a smaller, more compact, more sustainable form. This will reduce public costs by encouraging a more efficient use of existing and future infrastructure, while recognizing the critical importance of intergovernmental coordination and partnerships to realize the plan's objectives.

Three key Principles guide the plan for Lehigh Acres. The Guiding Principles are as follows:

1. Consolidate Development Patterns by Directing Growth

The quantity of growth to be absorbed in Lehigh Acres over the next 20 years will not be sufficient to fully build-out and consolidate the development patterns throughout the community. To avoid further fragmentation and population dispersion, and in the interest of sustainability and livability, growth should be guided first into areas that already have the necessary array of public services and facilities, and then to areas which may achieve a critical mass of growth to support a full array of public services and facilities over the plan horizon. Conversely, growth should be discouraged in those areas likely to remain sparsely built over the next 20 years.

2. Reserve Land for Non-residential/Service Uses

A fundamental flaw in the initial planning and platting of Lehigh Acres was a lack of consideration for the need to reserve appropriately-sized and located parcels to serve as sites for shopping and employment centers, schools and other civic uses, as well as for alternative housing types and mixed use activity centers. Sites should be reserved, and incentives provided for the development of such future uses, while discouraging conversion of land for additional residential use.

3. Anticipate Long-Range Risks to Public Health, Safety and Welfare

While there is little direct evidence today of an immediate health threat, at some point in the future the continued proliferation of private wells and septic systems could reach a critical mass of impact upon the quantity and quality of groundwater resources, and create a peril to public health. Similarly, while present levels of traffic congestion may be endurable, incremental growth of population and automobile trips, if not accompanied by proportionate, staged increases in traffic capacity, may reach a critical mass of intolerable gridlock. For these reasons, Lee County should anticipate and prepare to respond to such risks by working with regional and local agencies and organizations, including ECWCD, FGUA, the Health Department, Lee DOT, and others, to: (a) more thoroughly study these issues specifically related to Lehigh Acres; (b) pace the propagation of development in the sparsely settled areas of Lehigh Acres, where infrastructure systems, including roadways, are most incomplete/inadequate; (c) collectively and coordinately initiate actions and programs to avert or minimize potential threats.

The following paragraphs outline the potential interventions or strategic directions that respond to these key principles, and address areas of concern raised by Lehigh Acres residents and other stakeholders or derived from the analysis of existing conditions and key factors.

<u>*Strategic Direction 1:*</u> Undertake "early action" zoning and regulatory changes for improved development and urban design quality. Focal areas include commercial corridor standards, duplex residential standards, "downtown" Lehigh Acres and land use mix in zoning districts.

Strategic Direction 2: Stage and direct growth over time to areas presently or planned to be served by infrastructure, and away from areas likely to remain sparsely developed for the foreseeable future.

Strategic Direction 3: Implement a 10-Year Capital Improvement Program to (a) accelerate provision of infrastructure in Tier 2 within a 10-year period, and sooner within Tier 1; and (b) undertake priority road network enhancements in Tiers 1 and 2.

Strategic Direction 4: Coordinate Stormwater Improvement Initiatives (e.g., land acquisition) with the East County Water Control District (ECWCD).

Strategic Direction 5: Investigate the potential long-range environmental and public health threats from the proliferation of septic systems and private wells and become prepared to alter permitting of on-site systems as necessary.

Strategic Direction 6: Selectively acquire and assemble property for non-residential uses in Tiers 1 and 2.

Strategic Direction 7: Create Municipal Services Taxing Units to Fund Capital Improvements.

Strategic Direction 8: Develop a strategy for phased acquisition, relocation and environmental restoration of land in Tier 3 for conservation purposes.

Tier System

The pace and location of new development and infrastructure expansion in Lehigh Acres should be guided by the Tier System to ensure a more functionally and fiscally sustainable future. The proposed tiers are consistent with the three general sectors identified as the key components of the community structure. They are defined as follows:

Tier 1 – Largely Developed - Priority Area 1 (0-10 years)
The County should accelerate development of the complete array of infrastructure, services, and community form-givers in this tier, with a goal to complete within a 10-year period.

Tier 2 – Partially Developed - Priority Area 2 (10-20 years)
Tier 2 consists of those areas where the provision of these public facilities should be prioritized in the second decade of the planning horizon, 10 to 20 years from adoption of the plan.

Tier 3 – Sparsely Developed – Priority Area 3 (beyond 20 years)
Tier 3 consists of the least developed land in Lehigh Acres, has virtually no public services and facilities, few commercial uses and many roads that are in poor or very poor condition. Because of its lack of livability and the overwhelming cost to provide public services and facilities, and because Tiers 1 and 2 have sufficient development capacity, the general policy for Tier 3 should be to discourage development and to provide minimal levels of public investment, other than public safety.

There are two possible scenarios that would seek to minimize additional development in Tier 3, while respecting existing vested rights agreements and Florida law:

A. Retention/Improvement of Existing Tier 3 Development Pattern
Delay development in Tier 3, using all legal means available over the next 25-30 years or until Tiers 1 and 2 have approached buildout. During this time, Lee County, working with the School Board, the East County Water Control District and other entities, will prepare Tier 3 for future development, by acquiring and assembling land for commercial development, and developing schools, parks, stormwater management and other public services and facilities needed to support the complete buildout of Lehigh Acres, without changing the present pattern of platted lots, land use and streets.

B. Acquisition/Conservation/Environmental Restoration

Vacant land throughout Tier 3 would be permanently set aside through acquisition and conservation programs, for the purpose of creating a "greenbelt" to serve mitigation, environmental remediation, and stormwater management functions. This effort should be collectively supported and carried out by a consortium of entities including the East County Water Control District, Lee County, Florida DEP and USACOE.

Areawide Land Use Concept and Community Structure

The Proposed Future Land Use and Community Structure Maps depict the conceptual long-range development patterns and general distribution of land uses. The areawide framework is predicated on the notion of a smaller urbanized Lehigh Acres—an effective community land area reduced by approximately one-third of its present size (consistent with the finding that vacant residential land available in Tiers 1 and 2 will suffice to accommodate the 20-30 year growth). Future development in Tier 3 is discouraged, but not prohibited.

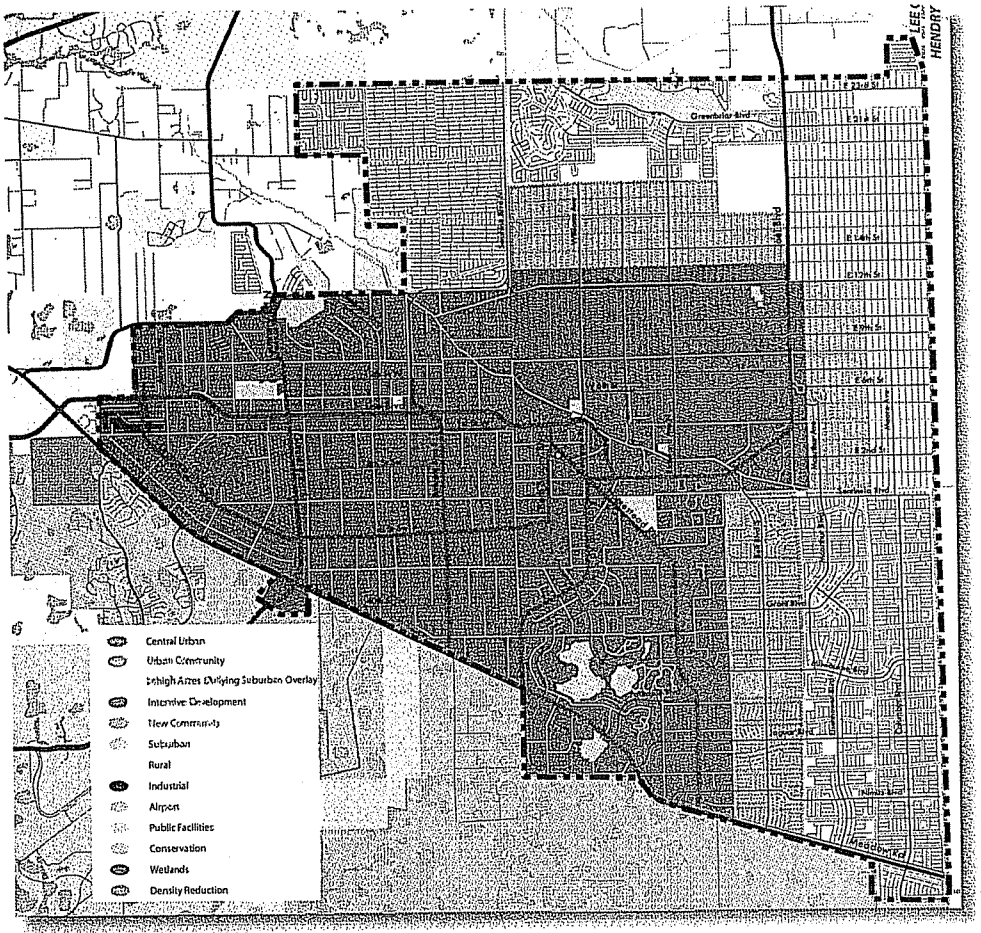
The land use concept uses the same basic land use designations that currently apply in Lehigh Acres, re-aligning their boundaries to coincide with the area of the community that is expected to urbanize within the timeframe of the plan. Tier 1 and the southwestern portion of Tier 2 are designated as the "Central Urban," allowing the introduction of incentives to higher residential densities and a broader range of housing types to disperse the concentration of duplexes and single family homes in this area. The remaining portions of Tier 2 are designated as Urban Community. They will serve as a transition between the Central Urban areas and Tier 3, which is proposed to be redesignated as the "Lehigh Acres Outlying Suburban Overlay." This new Comprehensive Plan special overlay designation is one of the recommended amendments to the Lee Plan and the Future Land Use Map. Each one of these categories can accommodate a range of specific land activities and development types.

The areawide framework also introduces a hierarchy of plan "units," ranging from the community scale, to the corridor, to the neighborhood, and to the node or activity center. The framework identifies streets that are, or will become arterials or collectors, and proposes to develop or retrofit them as "parkways," with a median (preferably landscaped) in the center. These will be a signal to the driver that these are "through streets" and will not lead to the dead end of a canal. The parkways will delineate the boundaries of smaller "building blocks" that bring down the massive expanse of Lehigh Acres to a more manageable and more "human" scale. Each building block or unit is likely to comprise several neighborhoods (neighborhood clusters)

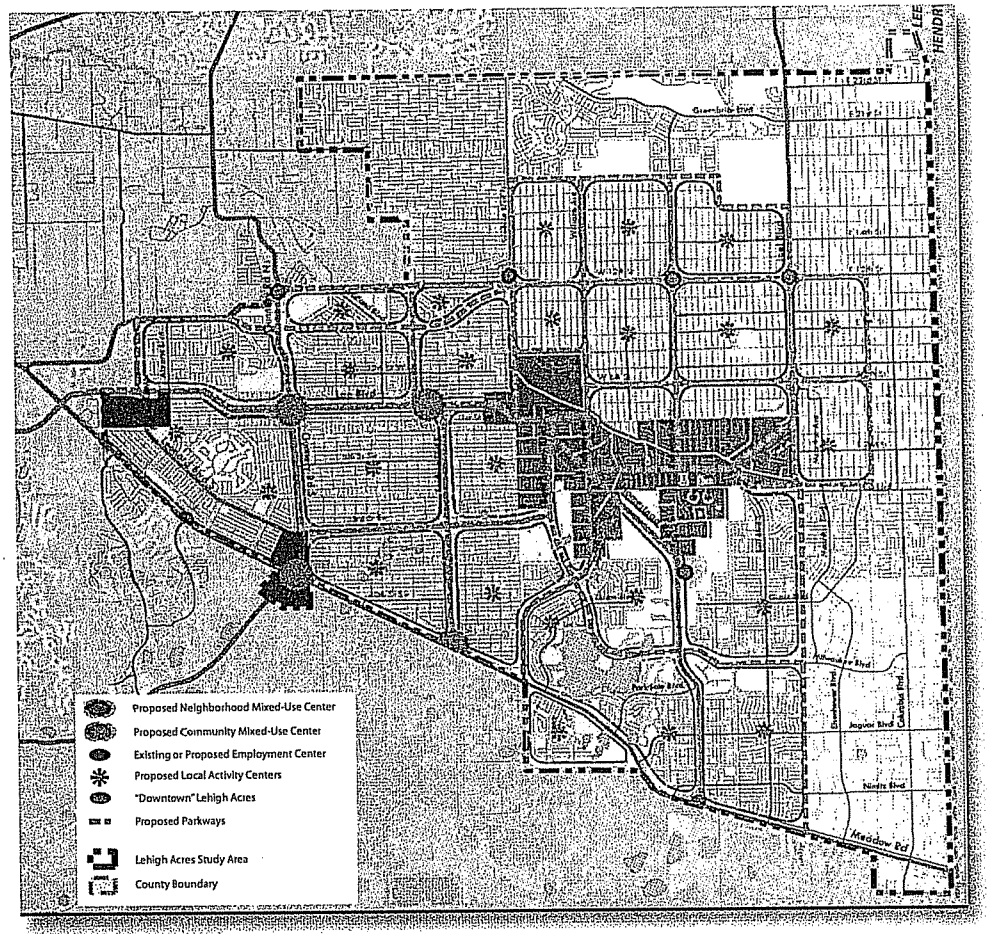
For commercial land uses, the concept plan proposes the development of commercial nodes at key points. These centers or nodes will satisfy between 30 and 50 percent of the 2030 projected commercial and employment acreage demand. They will also increase convenience and accessibility to goods and services needed by residents on a day-to-day basis. The nodes offer a viable alternative model to the prevalent pattern of strip commercial development along major roadway corridors, instead promoting transitional higher density residential uses (specifically townhouses or, where appropriate, apartments) along most of these frontages, while concentrating the commercial uses around the key intersections on larger (assembled) parcels. Higher density housing options are also encouraged as part of the land use mix within the nodes. Additional density to build the critical mass of these nodes may be transferable from Tier 3, or perhaps from the DR/GR.

Two major types of nodes are contemplated: *Community Mixed-Use Centers (CMUC),* which are shown at two key intersections on Lee Boulevard and two on SR 82 (in both cases, the intersections of these roads with Gunnery Rd. and Sunshine Blvd.); and *Neighborhood Mixed-Use Centers (NMUC)*, which are shown occurring along the improved 12th Street (Luckett Rd. extension project, which may provide well-timed opportunities for assembly of land for commercial uses) and at some intersections along SR 82. The size of these centers will range between 50 acres (Community scale) and 15 (Neighborhood scale). The proposed development character and proposed land use pattern of two of these nodes are depicted in more detail in the next section of this report.

The last type of node is the local Activity Center (AC). These are very small "walk-to" areas within a five- to ten-minute walk (1/4 to 1/2 mile) of the surrounding neighborhood they serve. A local AC may consist of no more than a single-use or mixed-use "neighborhood-scale commercial" development (for example, corner store, dry cleaner, coffee shop, barbershop or hair salon) on one corner of an important neighborhood intersection.

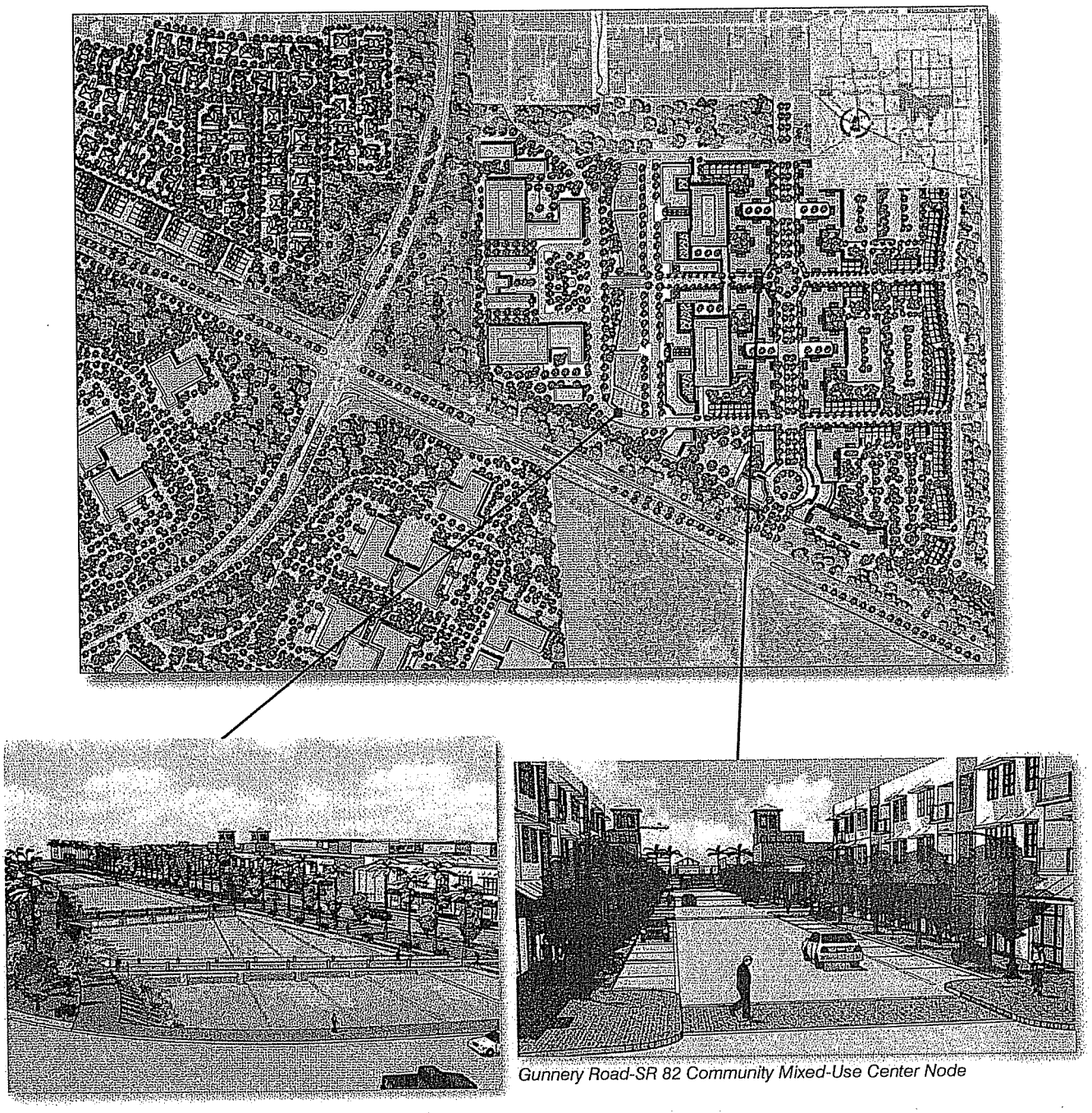


Proposed Future Land Use



Community Structure

The intersection of Gunnery Road and SR 82 offers a special opportunity. Not only is it a major access point into and out of Lehigh Acres, but a significant amount of vacant land is available on the south side of the highway. The size, access and visibility of this location suggests the potential to create a gateway designed around an employment/ commercial center to serve Lehigh Acres residents.



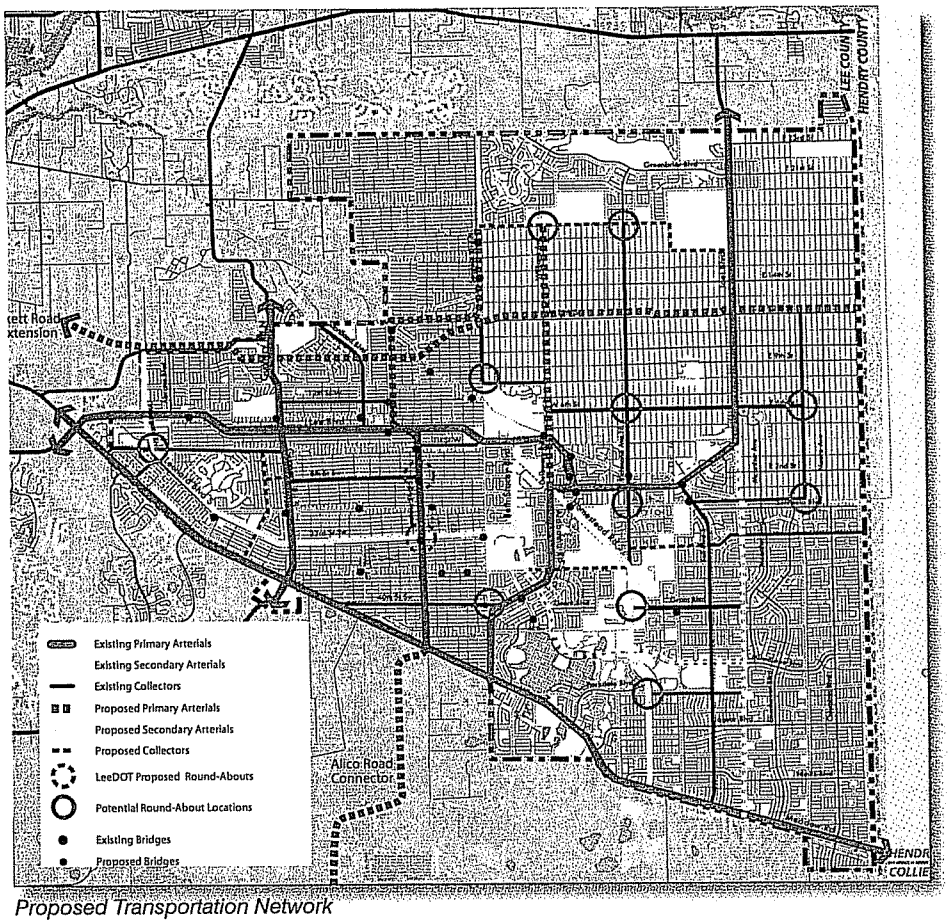
Gunnery Road-SR 82 Community Mixed-Use Center Node

Transportation Concept

The proposed transportation network includes as some new projects to create additional arterials and collectors to expand the north-south and east-west circulation alternatives within Lehigh Acres. It also recommends five new bridges in the area between Gunnery Road and Beth Stacy Blvd., 15th Street and 32nd Street to improve the continuity to the existing network, as well as an additional bridge on 40th Street between Anita Avenue and Paisley Avenue, connecting to Alabama Road. Hypothetical locations of traffic-calming roundabouts are also depicted.

The notion of an integrated, multi-modal transportation network is implicit in the framework for long-term sustainability. A system of complete streets along Lehigh Acres' major roadways is the long-term goal of this plan—

integrating a continuous, well-designed network of sidewalks, bike lanes, paths, or at least paved shoulders than can safely accommodate bicyclists, transit-riders, and accommodating the needs of the elderly and individuals with disabilities and mobility challenges.

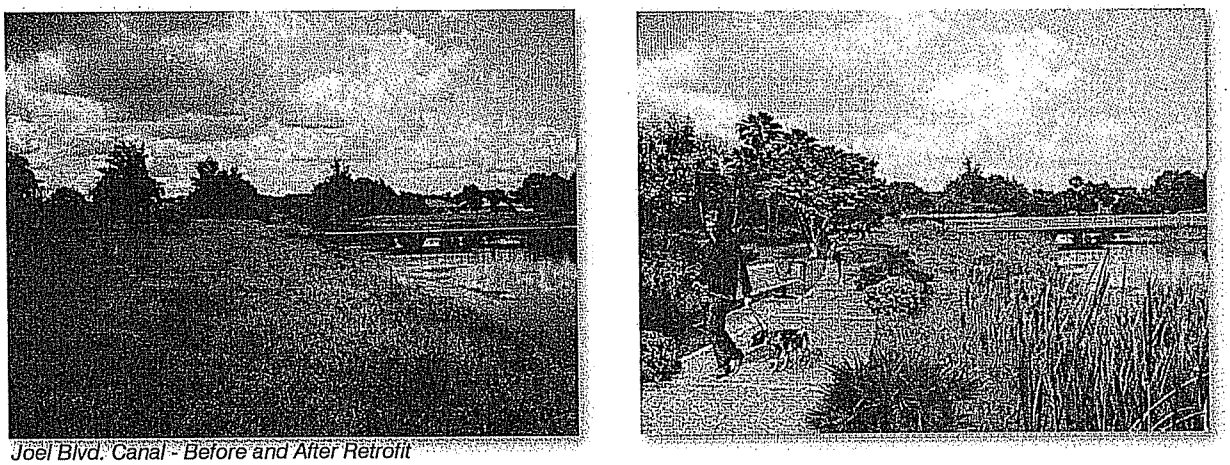


Proposed Transportation Network

Community Facilities

In response to the projected deficit of community park land in 2030, the plan identifies general locations for future facilities to meet this need, based on service area. Exact locations could be identified in coordination with other open space and recreational initiatives, such as Conservation 20/20, or the potential acquisition of sites by the East County Water Control District for improved stormwater management.

Another opportunity for developing the green infrastructure system in Lehigh Acres is represented by the existing canals. The right-of-way of the major canals, in particular the Able Canal, appears to contain sufficient excess land along side the canal itself to allow development of pedestrian paths.



Joel Blvd. Canal - Before and After Retrofit

Plan Implementation

Plans are turned into reality by taking action on them. This plan presents numerous strategies designed to bring about positive change, ranging from amended regulations to broad pragmatic initiatives; from potential changes in administrative practices; to recommendations for additional in-depth studies, to major capital improvements. These recommendations are not mutually exclusive, and are, in fact, more likely to be effective if looked at as a bundle of complementary actions. Implementing these actions will require not only resources that exceed the current capacity of the County, but also political will and the steady support and drive of the Lehigh Acres community.

Even if all these elements could be aligned at once, the transformation of Lehigh Acres should not be expected to occur overnight. It will likely require several decades to realize, due to the magnitude and complexity of the issues and conditions that need to be addressed. For this reason, it is important to establish a realistic implementation program if the plan is to be effective. The implementation program consists of a sequence of actions, projects, or initiatives that can or should be initiated or completed within a particular timeframe. Those that are labeled as "short-term" are actions that can be initiated immediately, or that can be completed within a short timeframe (1-2 years). They generally involve no new capital investment commitments, but rather include enactment of regulatory measures and development standards, investigation of funding sources, intergovernmental coordination and agreements, or more detailed plans or studies. "Medium-term actions" are those that involve larger-scale projects or programs, which may not be initiated immediately due to planning or funding needs, and/or which will require several years (2-5) to complete. Long-term actions are those not expected to begin for at least 5 years, or which will require in excess of 5 years to complete. Some actions will also result in continuing or ongoing programs that have no end date.

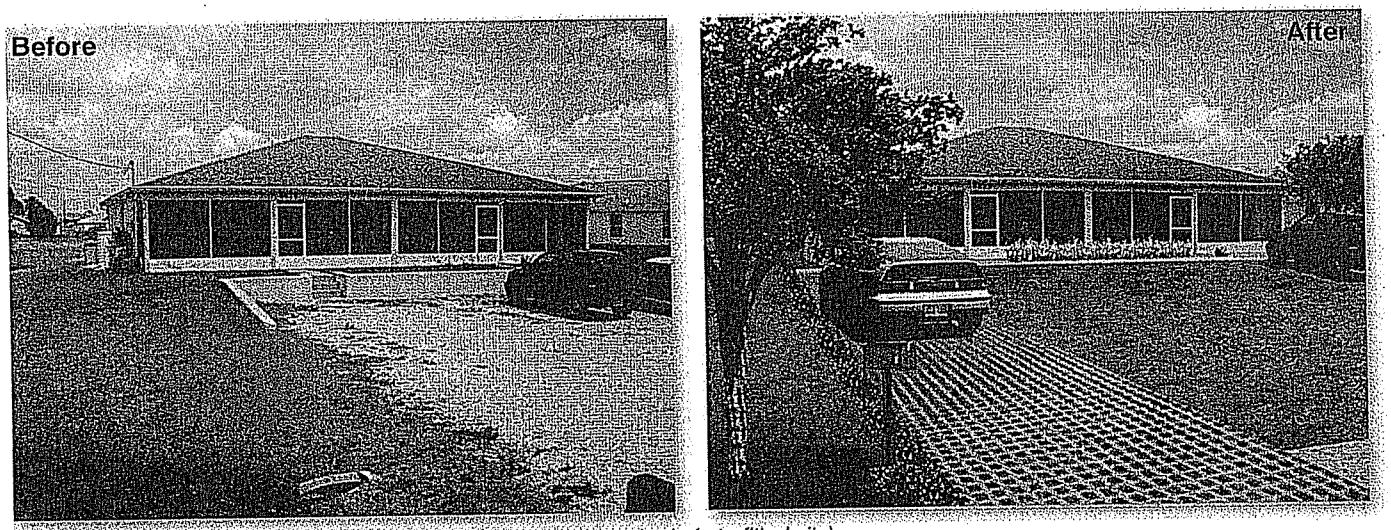
The action strategy is not intended as a definitive prescription, but rather is a guide to decision-making that sets priorities and identifies the general phasing of plan recommendations. It does not preclude actions from being implemented earlier or later, if the time and resources to address them suddenly become available or are delayed.

The action plan can be summarized as follows:

Short - Term Actions

- Explore cost-effective land acquisition opportunities that may present themselves through the escheatment process. Where these opportunities exist and can be capitalized on, plan for the aggregation of land for needed community facilities or to incentivize private development of commercial or employment uses. Coordinate "tax forgiveness" efforts with the School Board, Fire District, SFWMD and ECWCD.
- Proceed with the plan's recommended Future Land Use Map and Comprehensive Plan Amendments.
- Begin to incorporate and establish elements of the proposed community structure (e.g., mixed use centers) into the zoning and land development regulations; subdivision regulations; and other regulatory and planning mechanisms.
- Incorporate consideration of the location of capital improvements relative to the tier system as one of the factors that determine project funding priorities.
- Identify and adopt appropriate incentives (these may range from relatively simple things such as fast-track permitting or reduced permitting fees; impact fee reductions; to more costly and complex options such as support/assistance with land assembly or spearheading infrastructure improvements) for infill development in Tier 1, especially the area identified as "downtown Lehigh Acres" in the community structure.
- Work with Health Department to discourage/halt approval of septic tank variances, and to close regulatory loopholes that allow the construction of two septic tanks on lots smaller than 1/2-acre (e.g., advocate review of current definitions).

- Amend zoning / land development and urban design standards for Lee Blvd. and SR 82:
    * discourage model home development by making its approval subject to the special exception use process,
    * require greater site depths for commercial development to achieve better development configurations
    * establish site circulation standards to meet access management requirements (including shared drives, connected parking lots, etc.)
    * revisit the land use mix/list of permitted uses on some corridor segments to promote/incentivize town-home-style development, and
    * immediately rezone land in the "nodes" to commercial with a "mixed-use" overlay.
- For commercial development along these two corridors and elsewhere, additionally amend zoning / land development and urban design standards to address:
    * improved landscape and parking standards,
    * shared access and connectivity,
    * pedestrian amenities,
    * building siting / orientation, and
    * building design.
- Amend zoning / land development and urban design standards to regulate new duplex development:
    * more stringent landscape, on-site parking, and building design standards
    * require the creation of mid-block alleys and rear-facing garages in new development.
    * regulate the design treatment of septic drain fields (establishing grading requirements or maximum slopes to avoid the unattractive "mounded look" prevalent in some sectors of Lehigh Acres).
    * require varied building types/mix (e.g., townhomes) and articulation of the facade of duplex structures to resemble a single-family structure.
    * require the incorporation of Crime Prevention Through Environmental Design techniques.
    * prohibit additional duplex zoning.
- Consider expanding existing nonconforming structure provisions of the Land Development Code to existing duplex structures that do not comply with the amended duplex development standards once those standards become effective. One option is to allow the property to remain in its nonconforming status until the owner applies for a building permit. At that time, the use would have to be brought into compliance. Another option is to establish an amortization schedule for owners to bring the use or the structure into compliance. Amortization is a mechanism allowing for the removal of a nonconformity after the value of the non-conforming use or structure has been recovered—or amortized—over a period of time (e.g., three years). Since the value of the use or structure has been amortized, no compensation is payable after the expiration of the period.

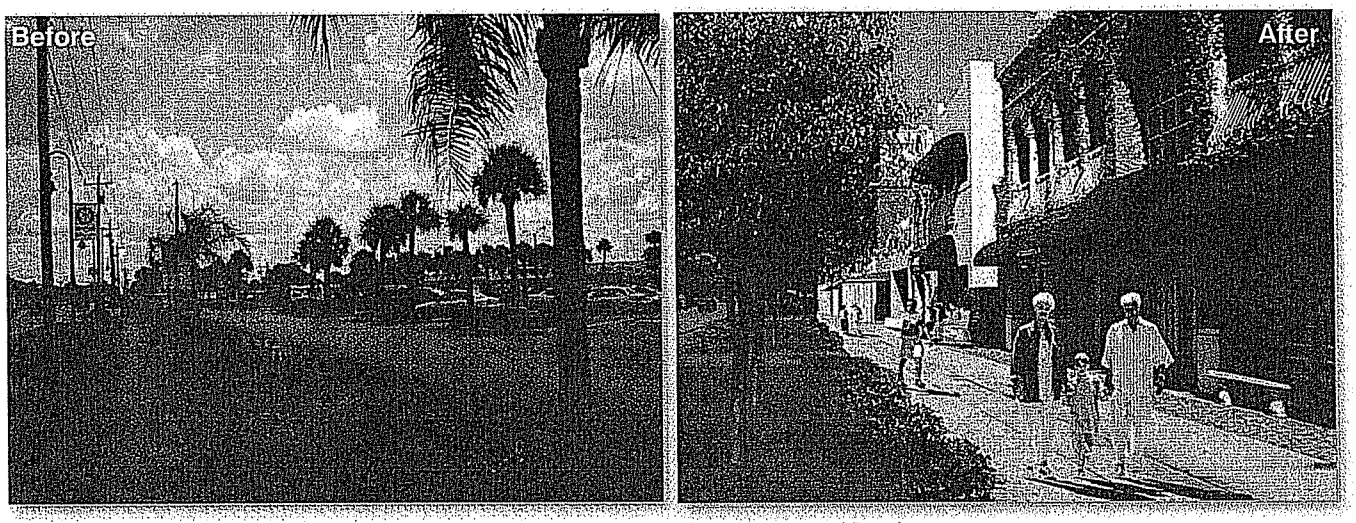


Existing duplex structure: Before and after enactment of new standards (retrofitted site)

- Coordinate with the DR/GR efforts to reconnect the Estero, Imperial and Six Mile Cypress headwaters, if feasible, with their south and westerly predevelopment flow.
- Define the alignment of the Luckett Road extension and begin to notify affected property owners. To the extent allowed by law, discourage new construction on the affected parcels, and explore the possibility of land swaps for lots that may be recovered elsewhere through the escheatment process.

Medium - Term Actions

- Conduct studies for the creation of voluntary municipal special taxing or benefit units (MSTU or MSBU) to fund capital improvements in Tiers 1 and 2 (pursuant to Sec. 27-61).
- Initiate dialogue with ECWCD, FGUA, Health Department, School District to coordinate joint land acquisition efforts, infrastructure extensions etc.
- Explore establishing a "Septic Tank Maintenance District" in Tier 3, following the criteria and recommendations of the SWFRPC Water Quality Subcommittee.
- Determine the feasibility of a transfer of development rights program from sending zones in Tier 3 or, potentially, DR/GR, to receiving zones in Tiers 1 and 2 or areas outside of Lehigh Acres suitable to higher densities.
- Consider preparing a detailed Lehigh Acres Green Infrastructure or Parks and Open Space Master Plan.
- Consider preparing a Lehigh Acres "Complete Streets" or Bicycle and Pedestrian Facilities Master Plan.
- Coordinate with Lee Tran to secure the launching of the Lehigh Circulator within the next 5 years. Continue to monitor the population needs as the community grows,
- Modify zoning / land development and urban design standards for "Downtown" Lehigh Acres:
    * Identify mechanisms, programs, and incentives to encourage the development of mixed-use on obsolete uses in "downtown" Lehigh Acres.
    * Consider creating an urban design plan, with consistent standards for the public realm (e.g., unified streetscape themes, signage, etc.).



Downtown Lehigh Acres: Before and after commercial redevelopment along Homestead Road

Longer - Term Actions

- Coordinate with FGUA regarding phasing, costs to extend central potable water and sanitary sewer systems in Tiers 1 and 2.

- Continue open dialogue with ECWCD, FGUA, Health Department, School District to coordinate actions geared toward joint land acquisition efforts, infrastructure extensions etc.
- Develop on-going / long term process for land acquisition in Tier 3 for stormwater management, conservation etc. A tool that the County should begin exploring sooner, under the current real estate market conditions, is acquisition of property through tax deed sales. The county is not required to use the public tax deed sale process for parcels valued at less than $5,000—if no one bids on a parcel, the ownership reverts to the county by default, or escheats.

Lehigh Acres
Aug 10

Name	Representing
Paul O'Connor	Lee Co
Edd Weiner	Lehigh Acres
Damon Shelar	" "
Richard Georgian (rgeorgino@embarqmail.com)	" "
Ilka Schwartzmeier	Lehigh Acres
Thomas Klumen	"
Matt Noble	L.C. Div. of Planning
Brandon Dunn	L.C. Planning

May 5, 2009

LEHIGH ACRES IMPLEMENTATION PLAN - PART I

LEE PLAN AMENDMENTS	TARGET DATES
• Meeting with Staff to discuss Lee Plan and LDC amendments	April 23, 2009
• First Draft of Lee Plan Amendments for staff review	June 15, 2009
• Second Draft of Lee Plan Amendments for staff review	June 29, 2009
• Final Staff Report for LPA (first meeting)	July 13, 2009*
• **First LPA Meeting (Lee Plan amendments)**	**July 27, 2009**
• Final Staff Report for LPA (second meeting)	August 10, 2009*
• **Second LPA Meeting (Lee Plan amendments)**	**August 24, 2009**
• Final Report for BoCC Transmittal Hearing	September 8, 2009*
• **Board of County Commissioners Transmittal Hearing**	**September 23, 2009**
• **Board of County Commissioners Adoption Hearing**	**Not Scheduled**

* **Final Report Deadline**

Lee Plan amendments include:

MAP AMENDMENTS

- Incorporate the Lehigh Acres Tier System map and description as and new Lee Plan map.
- Amend the Future Land Use Map to reflect consistency with the community land use concept. Re-designate all the land encompassed by Tiers 1 and 2 as (not determined).
- Re-designate all the land encompassed by Tier 3 as Lehigh Acres Outlying Suburban Overlay with a standard density range of two dwelling units per acre to four dwelling units per acre.
- Amend the Future Land Use Map to identify mixed-use activity nodes / commercial employment centers.

TEXT AMENDMENTS

- Revise the 2030 Vision Statement to describe the anticipated future in a manner consistent with the community vision and the Lehigh plan. *(Draft completed)*
- Draft a new policy or policies describing the Tier system.
- Draft policies requiring coordination between the appropriate agencies to prevent premature infrastructure extension or upgrading beyond the boundaries of Tier 2. The policies will require prioritizing all proposed capital expenditures according to the following guidelines (in order of priority):
    - Correct existing deficiencies
    - Accommodate growth in Tiers 1 and 2 over the next 20 years
    - Replace obsolete facilities
- Draft policies that encourage redevelopment where appropriated in the urban core of Lehigh Acres.
- Draft policies to apply the principles of community structure, including commercial, mixed-use and civic activity centers, and a hierarchy of parkway and greenway corridors. Designate the general location of mixed-use activity nodes in Lehigh Acres consistent with the community concept, and establish guidelines and criteria for their development.

LEHIGH ACRES IMPLEMENTATION PLAN - PART II

LDC AMENDMENTS	TARGET DATES
Draft LDC regulations	**April - September, 2009**
Staff review and revisions	**October 2009 - November 2009**
Land Development Code Advisory Committee	**December 11, 2009**
Executive Regulatory Oversight Committee,	**January 13, 2010**
Local Planning Agency	**February 22, 2010; and**
	March 22, 2010
Board of County Commissioners	**April, 2010**

Land Development Code amendments will include:

- Draft land development code regulations to address the recommended zoning changes in the Lehigh Acres Comprehensive Planning Study.

  a. Expand the array of permitted residential uses to include townhouses in order to provide an alternative to the predominant housing types in these areas (duplex and single family).

  b. Increase the minimum lot size for commercial uses in the overlay zone from 10,000 square feet to 50,000 square feet. To encourage only the development of viable retail uses, of a scale and configuration consistent with the proposed community structure.

  c. For the same reasons as listed above, increase the minimum lot size for residential uses from 7,500 square feet. Consider including these areas as density transfer receiving sites to provide a density incentive for development other than single-family residential.

  d. Require parcels with frontage on SR 82 to provide a 40-foot setback from the property line that adjoins the SR 82 right-of-way in order to establish a significant landscape buffer along SR 82. If the parcel is larger than 50,000 square feet a voluntary easement dedication should be encouraged. The easements will serve to create a continuous band of open space on SR 82 which could accommodate bicycle and pedestrian trails.

  e. An exception should be established for parcels along SR 82 that abut an existing utility easement.

  f. Attached dwellings (townhouses) must be built with no side setback or as a single building. However, attached dwellings located on corner lots must be set back at least 8 feet from the property line on the two sides of the lot that front on a street.

  g. Where commercial uses are developed on parcels located between Meadow Road and SR 82, but outside of designated Mixed-use Activity Centers, such properties must be screened from adjacent residential uses by a landscaped buffer, no less than 15 feet in width, measured from the property line.

  h. A perimeter wall or fence may be used in combination with the required landscaped buffer (never alone). The wall or fence may not exceed 6 feet In height, and may be setback no less than 10 feet from the property line (the fence must be located in the middle of the vegetated buffer, with planting in front and, preferably, behind it.

  i. The use of chain link, plastic, or vinyl fencing is prohibited.

- Draft standards for buildings in Mixed Use Overlay Districts as recommended in the Lehigh

Acres Comprehensive Planning Study.

a. Mixed use development (within a single project or structure) may be permitted as of right.

b. Integrated or "vertical" mixed-use projects, in which different uses are located on different floors of a single structure are preferred. belongs in LeePlan Not LDC

c. Residential uses that are part of a vertical mixed-use project may never be located below a commercial or office use.

d. The maximum height of mixed-use or single-use multifamily residential buildings located within Mixed Use Activity Centers is 4 stories.

e. The minimum Floor Area Ratio (FAR) for mixed use projects in Mixed Use Activity Centers is 0.3.

f. ~~The property line abutting the primary access road to the parcel will be considered the front of the property in Mixed Use Activity Centers.~~

g. Front yard setbacks will be a minimum of 10 feet and a maximum of 15 feet; side setbacks a minimum of 0 feet and a maximum of 10 feet; rear setbacks a maximum of 20 feet. can't have maximums on all four sides

h. Multifamily buildings will have a 10 foot side yard setback from the property line.

i. The primary facade of all buildings located within Mixed Use Activity Centers must be oriented to the primary access road. This facade must contain the main building entrance which must be clearly visible from the street.

j. Pedestrian paths must be provided to link parcels within a Mixed Use Activity Center to neighboring properties.

k. Buildings must be designed and sited to provide functional, livable outdoor spaces. The inclusion of plazas/squares, galleries, courtyards, patios and terraces is encouraged, provided that such spaces are designed to enhance and reinforce the human scale and activity on the public sidewalk. Design must take into consideration views, solar angles, and the nature of activities anticipated to occur in the outdoor space.

l. All accessory uses, including parking, storage, service, and utilities, must be located to the side or read of the parcel.

m. Shared access and parking between adjacent businesses and/or developments are encouraged.

n. Commercial uses must be screened from adjacent residential neighborhoods by a landscaped buffer no less than 5 feet in width, measured from the property line.

o. A perimeter wall or fence may be used in combination with the required landscaped buffer (never alone). The wall or fence may not exceed 6 feet in height, and must be setback no less than 5 feet from the property line (the fence must be located in the middle or behind the vegetated buffer).

p. Where a fence or wall is visible, they must have piers, newel posts, or columns at corners

or ends. Any visible portion of fence that is over 10 feet in length must include visual breaks, including openings, changes of plane or height, or the introduction of architectural accents to minimize monotony.

q. The use of chain link, plastic, or vinyl fencing will be prohibited.

r. Surface parking lots must be defined by a landscape hedge or a combination of hedge and perimeter wall per (n) above.

s. At least five percent of the gross area of a surface parking lot must consist of planting areas that can accommodate shade trees.

t. Planting islands must be located and sized to provide a minimum root zone for canopy trees and a minimum setback from curb to perimeter of trunk of 4 feet.

u. One shade tree must be provided for every eight (8) parking spaces. Trees must be distributed to provide continuous canopy coverage over the entire lot.

v. Parking lots must include well defined interior pedestrian walkways that are connected to sidewalks and to pedestrian walkways on adjacent properties. Walkways must be a minimum of 4 feet wide, with a minimum 5-foot planting strip on one side to accommodate shade trees.

w. Parking bays separated by pedestrian walkways must include a maximum of 10 parking spaces.

x. Automobile headlight illumination from parking areas must be screened from adjacent lots and from the street.

y. Outdoor mechanical equipment must be placed on the roof, to the rear or side of a building, and must be screened from view from any of the abutting buildings or streets by fences, dense landscape, or (in the case of rooftop equipment) a parapet.

- Draft standards for duplex development as recommended in the Lehigh Acres Comprehensive Planning Study.

a. To facilitate the design and development of efficiently graded and attractively configured duplex sites, the minimum lot size for new duplex development is 10,000 square feet.

b. In areas zoned for duplex and two-family development, the creation of mid-block alleys that can be shared by multiple sites is encouraged.

c. All existing and new duplex and two-family homes must provide a paved driveway. Brick pavers, decorative paving or permeable porous paving are all encouraged.

d. The appearance of new duplex or two-family structures to resemble a single-family dwelling is desirable. Where feasible, the facade and/or roof massing of existing duplex structures should be retrofitted to resemble a single-family structure.

e. All duplex structures must have a distinct entry feature such as a porch or weather covered entry way with at least thirty-six square feet of weather cover, and a minimum dimension of four feet. Covered porches open on three sides may encroach six feet into a required front setback.

f. If practicable, a duplex structure should have a single front door to face the street.

g. Parking requirements must comply with standard single-family development for each unit. Front yard parking is limited to four cars.

h. If practicable, garage doors should not face the street.

i. Where central infrastructure is not available and development of the lot requires the use of an on site sewage treatment and disposal system, require that the entire lot be graded, if grading is required. The maximum slope on any given lot will be set at approximately 1.5 : 10 (1-1.2 feet of slope per every 10 linear feet).

RESOLUTION NO. 09-03-29

RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA
ENDORSING THE LEHIGH ACRES COMPREHENSIVE PLANNING STUDY

WHEREAS, the Board of County Commissioners funded a comprehensive community planning effort for the Lehigh Acres Planning Community; and

WHEREAS, the resulting Lehigh Acres Comprehensive Planning Study was a combination of a grass roots/citizen initiated and Lee County effort to guide future development and re-development in Lehigh Acres; and

WHEREAS, the community planning effort required coordination among the Lehigh Acres Community, the Lehigh Acres Community Planning Corporation, Inc., the County's consultants, and Lee County staff; and

WHEREAS, on February 11, 2009 the Lehigh Acres Community Planning Corporation, Inc. unanimously endorsed the Lehigh Acres Comprehensive Planning Study; and

WHEREAS, on February 16, 2009 the Lehigh Acres Community Council unanimously endorsed the content and conceptual development recommendations in the Lehigh Acres Comprehensive Planning Study; and

WHEREAS, the Board, after review of the Planning Study and in accord with the action of the Lehigh Acres Community Planning Corporation and the Lehigh Acres Community Council believes it is appropriate to endorse the Lehigh Acres Comprehensive Planning Study in order to facilitate implementation of the Study's recommendations.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

1. The Board finds the Lehigh Acres Comprehensive Planning Study, attached as Exhibit A, is a definitive statement endorsed by the citizens of Lehigh Acres as to future vision of the Lehigh Acres community.

2. The Board hereby endorses the attached Lehigh Acres Comprehensive Planning Study.

3. County staff is directed to cooperate with the Lehigh Acres community to pursue Lee County Comprehensive Plan and Land Development Code amendments reflecting the recommendations set forth in the Lehigh Acres Comprehensive Study.

THE FOREGOING RESOLUTION was offered by Commissioner Mann, who moved its adoption. The motion was seconded by Commissioner Hall, and upon being put to a vote was as follows:

A. BRIAN BIGELOW	Aye
TAMMARA HALL	Aye
ROBERT P. JANES	Aye
RAY JUDAH	Aye
Frank MANN	Aye

DULY PASSED AND ADOPTED on March 24, 2009.

WO 1
3-24-09

ATTEST:
CHARLIE GREEN, CLERK

BY: Marcia Wilson
Deputy Clerk

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Ray Judah, Chairman

Approved as to form by:

_____
Dawn E. Perry-Lehnert
Office of the County Attorney

BOARD OF COUNTY COMMISSIONERS
SEAL
LEE COUNTY, FLORIDA

CIRCUIT COURT
LEE COUNTY, FLORIDA

I CERTIFY THIS DOCUMENT TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE
CHARLIE GREEN, CLERK CIRCUIT COURT
LEE COUNTY, FLORIDA
DATED: 4-14-09

BY: Marcia Wilson
Deputy Clerk

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

LEHIGH CORPORATION,

Plaintiff,

vs.

LEE COUNTY, a political subdivision of the State of Florida,

Defendant.

Case No. 85-5843 CA-EOF

STIPULATION AND SETTLEMENT AGREEMENT

Plaintiff, Lehigh Corporation ("Lehigh"), and Defendant, Lee County, hereby enter into this Stipulation and Settlement Agreement in the above-referenced cause and in support thereof state:

WHEREAS, Lehigh is a corporation organized and existing under the laws of the State of Florida and the owner and developer of the planned community of Lehigh Acres, which is located in unincorporated Lee County, Florida; and

WHEREAS, Lee County is the local government with jurisdiction over Lehigh Acres; and

WHEREAS, the East County Water Control District oversees surface water management of Lehigh Acres, Lehigh Acres Utilities, Inc. provides water and sewer services to Lehigh Acres, Lehigh Acres Fire District provides fire protection and inspection services for Lehigh Acres, and various lighting districts provide street lights in portions of Lehigh Acres; and

WHEREAS, on November 16, 1984, the Lee County Board of County Commissioners adopted, pursuant to the requirements of Section 163.3161, et. seq., Florida Statutes (1983), the Lee County Comprehensive Land Use Plan ("Lee Plan") as Lee County Ordinance No. 84-28; and

WHEREAS, the Lee Plan provides that all development and all actions taken in regard to development must be consistent with the Lee Plan unless a landowner or developer has previously obtained vested rights to develop his lands; and

WHEREAS, pursuant to the Lee Plan, Lehigh timely filed an application for administrative interpretation of vested rights, claiming that it had vested rights to develop the remaining undeveloped parts of Lehigh Acres in accordance with its Master Land Use Plan Map; and

WHEREAS, by Administrative Interpretation of Vested Rights dated August 19, 1985, the Administrative Designee of Lee County determined that Lehigh had a vested right to develop all of those portions of Lehigh Acres for which a plat had been prepared

EXHIBIT "A"

by Lehigh and approved and recorded by Lee County. The administrative designee further concluded, however, that all remaining undeveloped and unplatted lands in Lehigh Acres were not vested under the Lee Plan; and

WHEREAS, Lehigh timely requested an appeal of the Administrative Designee's Administrative Interpretation of Vested Rights to the Lee County Board of County Commissioners; and

WHEREAS, the Lee County Board of County Commissioners, by a 2-2 tie voice vote denied Lehigh's Administrative Appeal on October 2, 1985; and

WHEREAS, on October 31, 1985, Lehigh filed the subject action for a declaratory judgment for a declaration of its rights under the Lee Plan so that it would have judicially determined whether it has vested rights to develop the remaining unplatted and undeveloped portions of Lehigh Acres; and

WHEREAS, Lehigh and Lee County desire to amicably resolve this dispute without the need for further legal proceedings; and

WHEREAS, Lehigh and Lee County hereby ratify and affirm that the settlement of this suit is in the public interest and in the interests of the parties hereto.

WHEREFORE, in light of the foregoing declarations, Lehigh and Lee County hereby agree and stipulate as follows:

1. The lands within Lehigh Acres which are the subject of this Stipulation and Settlement Agreement are approximately described as follows:

(1) NE¼ of NE¼ of NE¼ of Sec. 25, Township 43S, Range 26E.

(2) SE¼ of NE¼ of NE¼ of Sec. 25, Township 43S, Range 26E.

(3) NE¼ of SE¼ of NE¼ of Sec. 25, Township 43S, Range 26E.

(4) W½ of SE¼ of SW¼ S. of Caloosahatchee River, Sec. 19, Town-ship 43S, Range 27E.

(5) All of the NW¼ lying N. of S.R. 80 of Sec. 30, Township 43S, Range 27E.

(6) All of the NW¼ of NE¼, lying N. of S.R. 80 of Sec. 30, Township 43S, Range 27E.

(7) All of Sec. 30, Township 43S, Range 27E, lying S. of S.R. 80, less out parcels.

(8) W½ of Sec. 31, Township 43S, Range 27E.

(9) W½ of SE¼ of Sec. 31, Township 43S, Range 27E.

(10) SE¼ of SE¼ of Sec. 31, Township 43S, Range 27E.

(11) SW¼ of NE¼ of Sec. 31, Township 43S, Range 27E.

(12) SW¼ of NW¼ of NE¼ Sec. 31, Township 43S, Range 27E.

(13) NE¼ of NE¼ of NE¼ Sec. 31, Township 43S, Range 27E.

(14) S½ of NE¼ of Sec. 36, Township 43S, Range 27E.

(15) NE¼ of NE¼ of Sec. 36, Township 43S, Range 27E.

(16) All of Sec. 10, Township 44S, Range 27E.

(17) All of Sec. 30, Township 44S, Range 27E, lying N. of Able Canal, less County Park.

(18) Northerly part of W½, S. of Able Canal of Sec. 30, Township 44S, Range 27E.

(19) W½ of NE¼ of Sec. 5, Township 45S, Range 27E.

(20) SE¼ of SW¼ of Sec. 5, Township 45S, Range 27E.

(21) SW¼ of SE¼ of Sec. 5, Township 45S, Range 27E.

(22) S½ of SW¼ of Sec. 4, Township 45S, Range 27E.

(23) SW¼ of SE¼ of Sec. 4, Township 45S, Range 27E.

(24) W½ of NE¼ of Sec. 9, Township 45S, Range 27E.

(25) W½ of SE¼ less the W. 125' of Sec. 15, Township 45S, Range 27E.

(26) Block "B" of Lehigh Park, Secs. 21 & 22, Township 44S, Range 26E.

(27) Block "A" of Lehigh Park, Sec. 23, Township 44S, Range 26E.

(28) Block 20 of Lehigh Park, Sec. 23, Township 44S, Range 26E.

(29) W½ of SE¼, East of Beth Stacey Blvd., of Sec. 6, Township 45S, Range 27E.

(30) S½ of N½ of NW¼ of NE¼ of Sec. 6, Township 45S, Range 27E.

(31) N½ of S½ of NW¼ of NE¼ of Sec. 6, Township 45S, Range 27E.

(32) N½ of NE¼ of SW¼ of NE¼ of Sec. 6, Township 45S, Range 27E.

(33) S½ of NW¼ of SW¼ of NE¼ of Sec. 6, Township 45S, Range 27E.

(34) S½ of SW¼ of NE¼ of Sec. 6, Township 45S, Range 27E.

(35) N½ of NE¼ of NE¼ of SE¼ of Sec. 4, Township 45S, Range 27E.

(36) W½ of SW¼ of NW¼ of Sec. 3, Township 45S, Range 27E.

(37) NE¼ of SW¼ of NW¼ of Sec. 3, Township 45S, Range 27E.

(38) S½ of NW¼ of NW¼ of Sec. 3, Township 45S, Range 27E.

(39) Blocks 5 & 6 of Carlton Park, Sec. 32, Township 44S, Range 27E.

(40) Blocks 10, 11, 12, 16 & 17 of Carlton Park, Sec. 33, Township 44S, Range 27E.

(41) Blocks 1 & 2, of Country Club Estates, Sec. 34, Township 44S, Range 27E.

(42) All of the undeveloped portions of Blocks 1, 2, 3, 4, 5, 8, 9, 10 and 11 of the unrecorded plat of Sunshine Shopping Plaza, Section 31, Township 44S, Range 27E.

(43) All of the undeveloped portions of Section 34, Township 44S, Range 27E lying NW of Joel Boulevard.

(44) The westerly half of Block 27A, Country Club Estates, Section 34, Township 44S, Range 27E.

(45) The undeveloped portion of Block 19, Country Club Estates, Section 34, Township 44S, Range 27E.

(46) The vacated portion of Blocks 25, 26 and 27, Country Club Estates, Section 34, Township 44S, Range 27E.

(47) That vacated portion of Sections 32 and 33, Township 44S, Range 26E, for the condo Beau Rivage.

(48) That vacated portion of Blocks 4 and 5, Unit 1, Lehigh Estates, Section 30, Township 44S, Range 26E.

(49) The Easterly portion of Block 7, Unit 1, Lehigh Estates, Section 30, Township 44S, Range 26E.

A map depicting these approximate areas, which are indicated by number in yellow on the map, is attached hereto and incorporated herein as Exhibit A.

2. The intent of this Agreement is to provide Lehigh with urban densities and intensities of use for development that will be independent of Lee County subsidized infrastructure for the lands which are the subject of this Agreement.

3. Lee County, therefore, affirms and ratifies that Lehigh will be allowed densities and intensities of use, commensurate with its existing development in Lehigh Acres, for the lands which are the subject of this Agreement. Lee County further affirms and ratifies that these densities and intensities of use are consistent with and vested under the Lee Plan and any subsequent plans adopted pursuant to Chapter 163, Florida Statutes. Lehigh agrees that all such new development, however, will be independent of Lee County subsidized infrastructure (i.e., streets and roads, potable water, sewer, and storm water facilities).

4. The costs for providing such essential infrastructure shall be borne as follows:

(a) Lehigh shall provide the streets and roads for the subject lands and construct these streets and roads in accordance with the Lee County regulations in force at the time plats for said lands are approved by Lee County. Such streets and roads shall be accepted by Lee County in accordance with the provisions of the subdivision platting assurance agreement between Lee County and Lehigh;

(b) Lehigh Utilities, Inc. shall provide water and sewer services in accordance with provisions and terms of Lehigh's agreement with the Lee County Health Department dated April 8, 1970, as affirmed January 20, 1983, and as further reaffirmed January 27, 1987, the contents of which are attached hereto and incorporated herein as Composite Exhibit B;

(c) Stormwater facilities shall be constructed by Lehigh in conformance with the overall drainage plans of the East County Water Control District.

5. Lee County agrees that it will grant plat approval and development orders for said lands on the condition that all essential infrastructure set forth in the preceding paragraph has been or will be provided in accordance with this Agreement and Composite Exhibit B.

6. The parties further agree that the principles, rights, duties, and responsibilities set forth herein shall be incorporated into any subsequent comprehensive plan adopted by Lee County pursuant to Chapter 163, Florida Statutes.

DONE and ENTERED this 22nd day of December, 1988.

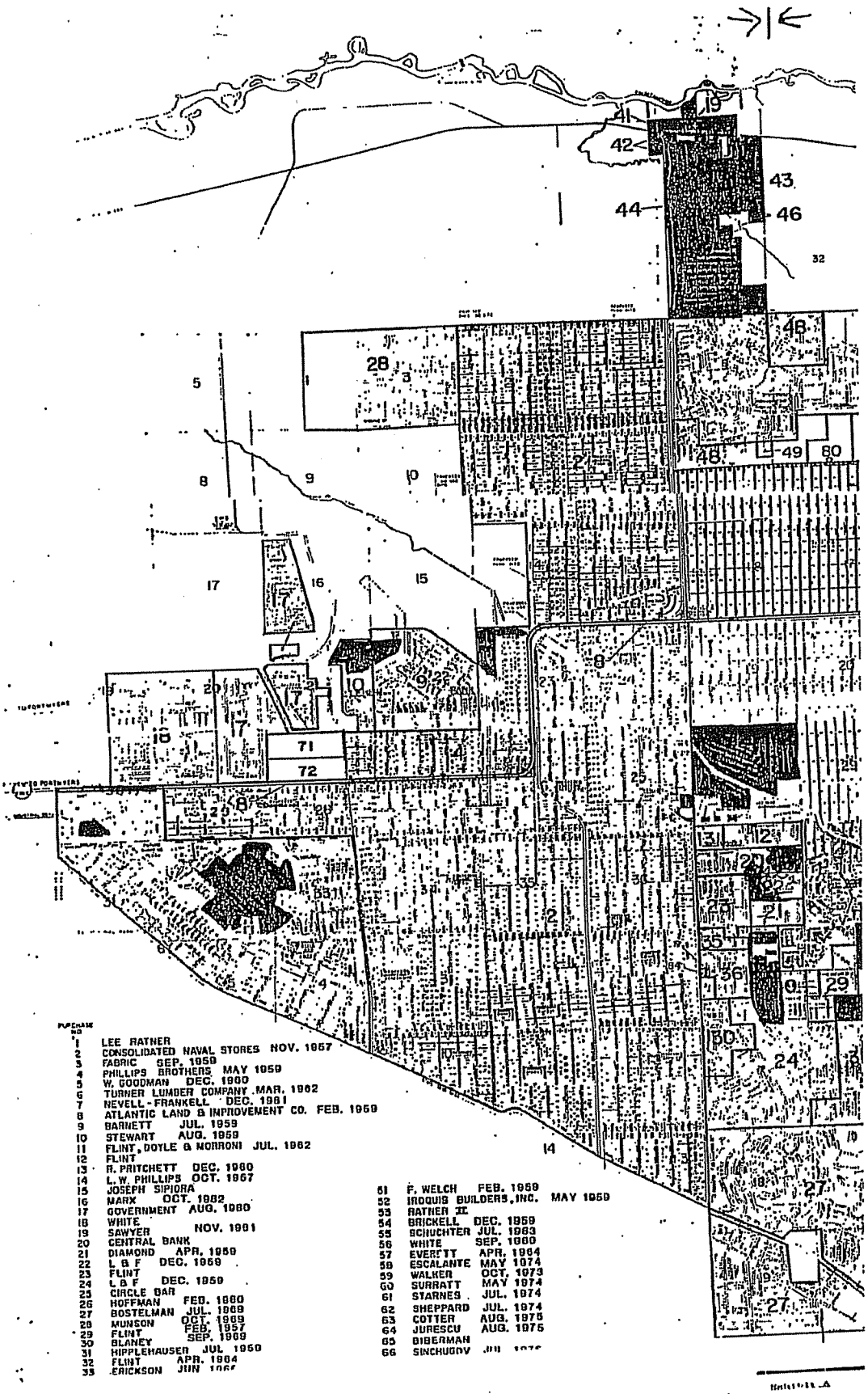
William L. Hyde

WILLIAM L. HYDE
ROBERTS, BAGGETT, LaFACE & RICHARD
Post Office Drawer 1838
Tallahassee, Florida 32302
(904) 222-6891
ATTORNEYS FOR LEHIGH CORPORATION

Robert W. Gray

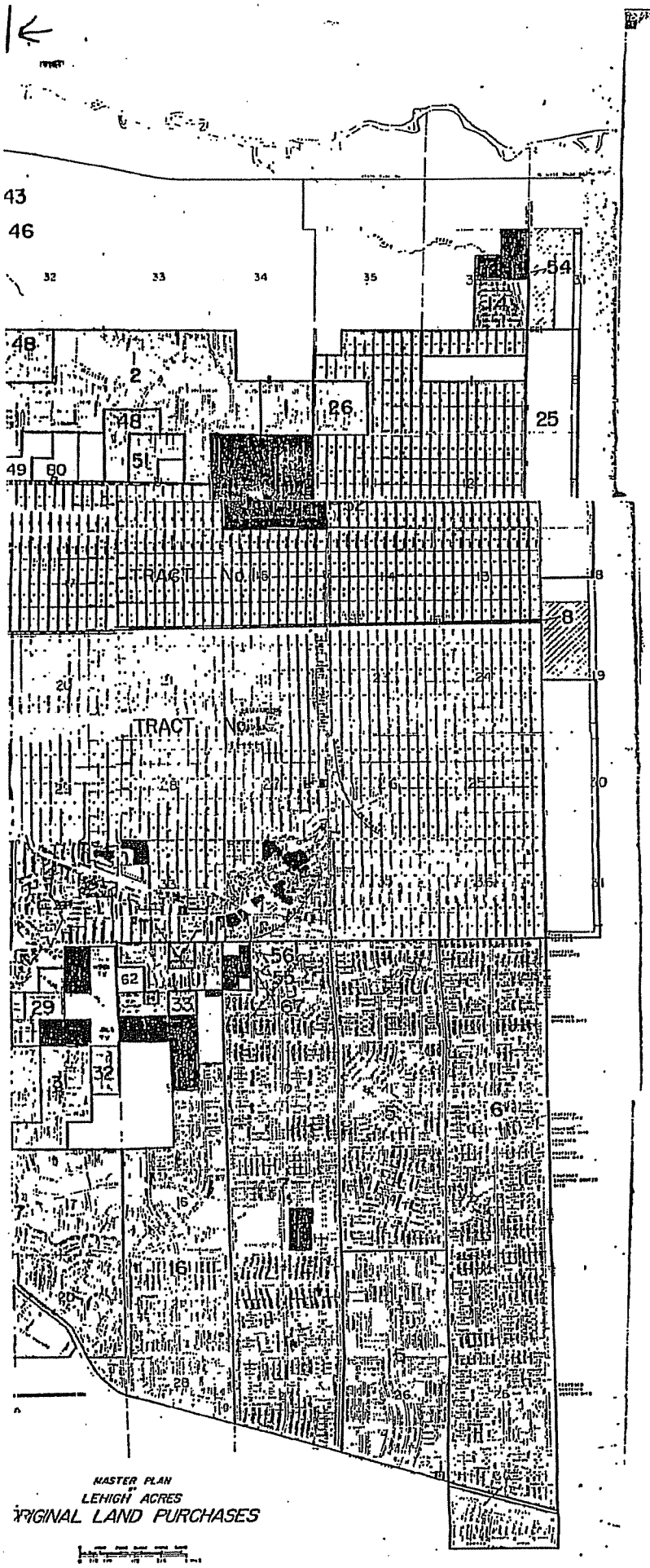
ROBERT GRAY
Assistant County Attorney
Lee County
Post Office Box 398
Fort Myers, Florida 33902-0398
ATTORNEYS FOR LEE COUNTY

WLH/LehiSetAgr/gdw



PURCHASE NO		
1	LEE RATNER	
2	CONSOLIDATED NAVAL STORES	NOV. 1957
3	FABRIC	SEP. 1958
4	PHILLIPS BROTHERS	MAY 1959
5	W. GOODMAN	DEC. 1960
6	TURNER LUMBER COMPANY	MAR. 1962
7	NEVELL-FRANKELL	DEC. 1961
8	ATLANTIC LAND & IMPROVEMENT CO.	FEB. 1959
9	BARNETT	JUL. 1959
10	STEWART	AUG. 1959
11	FLINT, DOYLE & MORRONI	JUL. 1962
12	FLINT	
13	R. PRITCHETT	DEC. 1960
14	L. W. PHILLIPS	OCT. 1957
15	JOSEPH SIPIORA	
16	MARX	OCT. 1962
17	GOVERNMENT	AUG. 1960
18	WHITE	
19	SAWYER	NOV. 1961
20	CENTRAL BANK	
21	DIAMOND	APR. 1959
22	L & F	DEC. 1959
23	FLINT	
24	L & F	DEC. 1959
25	CIRCLE BAR	
26	HOFFMAN	FEB. 1960
27	BOSTELMAN	JUL. 1969
28	MUNSON	OCT. 1969
29	FLINT	FEB. 1957
30	BLANEY	SEP. 1969
31	HIPPLEHAUSER	JUL 1950
32	FLINT	APR. 1964
33	ERICKSON	JUN 1966
51	F. WELCH	FEB. 1959
52	IROQUIS BUILDERS, INC.	MAY 1959
53	RATNER II	
54	BRICKELL	DEC. 1959
55	SCHUCHTER	JUL. 1963
56	WHITE	SEP. 1960
57	EVERETT	APR. 1964
58	ESCALANTE	MAY 1974
59	WALKER	OCT. 1973
60	SURRATT	MAY 1974
61	STARNES	JUL. 1974
62	SHEPPARD	JUL. 1974
63	COTTER	AUG. 1975
64	JURESCU	AUG. 1975
65	BIBERMAN	
66	SINCHUGOV	JUN 1975

ORIGIN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TRACT No. 16
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TRACT No. 1
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MASTER PLAN
LEHIGH ACRES
ORIGINAL LAND PURCHASES

STATE OF FLORIDA
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

Please Address Reply To: Lee County Health Department

January 27, 1987

Mr. Garry Long, Vice-President
Lehigh Utilities, Inc.
305 Coolidge Avenue
Lehigh Acres, Florida, 33936

Re: 1986 Survey of
Lehigh Acres Area Density

Dear Mr. Long,

Your analysis of the 1986 survey of the Lehigh Acres area density as it relates to public water and sewer connections was forwarded to me. I have reviewed your results and find that they fall within the guidelines of the density agreement between the Lehigh Corporation and the Lee County Health Department.

This department would again wish to continue with such an agreement if the Lehigh Corporation desires. Our present arrangement remains in accordance with Chapter 10D-6.46 (7) (c) of the Florida Administrative Code. Permit me to enumerate again these conditions to which we have both previously agreed:

1. Each residential site shall be allowed an on-site sewage disposal system within a section of land; along with the private potable water well, until twenty-five percent (25%) of the building sites have been used for residential building.

2. After public water distribution lines are installed and made functional to a section of land within the development, on-site sewage disposal systems shall be approved until the same section of land reaches a fifty percent (50%) density of residential building.

3. Commercial and multi-family buildings over four (4) living units shall be evaluated for on-site sewage disposal systems individually and separately.

4. The Lehigh Corporation shall furnish the Lee County Health Department an up-to-date report on densities of construction on each section of land and this report shall be made annually and beginning in December, 1983.

5. The Lehigh Corporation shall cause all system failures to be corrected.

EXHIBIT "B"

6. In the event that Lehigh Corporation, Lehigh Utilities, or any portion of the development changes ownership (excluding normal lot sales), this agreement shall require a written statement from the owner/management agreeing to all provisions of this document. Said statement shall be presented to the Lee County Health Department within thirty (30) days from the ownership/management change.

Should these conditions meet with your approval, please so state in :ting to me. Thanks for your assistance to this department. I look ward to hearing from you on this matter.

Sincerely,

JOSEPH H. BARKER, R.S.
Environmental Health Director

:ee

R t S. Tomchik, M.D.

LEHIGH UTILITIES, INC.
LEHIGH, FLORIDA
33936

February 10, 1987

Joseph H. Barker, R.S.
Environmental Health Director
Lee County Health Department
3920 Michigan Avenue
Ft. Myers, Florida 33901

RE: LEHIGH DENSITY AGREEMENT

Dear Mr. Barker:

In regards to your letter of January 27, 1987, Lehigh's senior management would also wish to continue the present Density Agreement with Lee County Health Department.

If there are any questions or problems in this regard, please feel free to contact me at any time at 369-1343.

Sincerely,

GARRY LONG
VICE PRESIDENT

cc: James Fortana

DEPARTMENT
Health & Rehabilitative Services

Bob Graham, Governor

DISTRICT EIGHT

Please Address Reply To: Lee County Health Department
Joseph W. Lawrence, M.D., Director

LEE COUNTY HEALTH DEPARTMENT
3920 Michigan Ave.
Fort Myers, Florida 33901

January 20, 1983

Mr. Edward Shapiro, Vice President
Lehigh Corporation
201 East Joel Boulevard
Lehigh, Florida 33936

Dear Mr. Shapiro:

The Lee County Health Department and the Lehigh Corporation entered into a firm policy pertaining to onsite sewage disposal systems within the total land area then known as the Lehigh Acres Development and in the eastern portion of Lee County. The initial policy was adopted on April 8, 1970. Subsequent changes in regulations of the Florida Sanitary Code, and more specifically identified as Chapter 10D-6, Florida Administrative Code, raised questions as to the validity of the prior agreement.

Through many consultations and exchanges of pertinent information with the Florida Department of Health and Rehabilitative Services, Health Program Office, the 1970 agreement, with some modification, has been agreed upon. A letter from H.R.S. dated January 11, 1983 is attached for its supportive value.

The entire development of the Lehigh Corporation, having a long history of satisfactory ground water, shall be given approval for onsite sewage disposal systems based upon requirements of Chapter 10D-6, F.A.C. and other stipulations as follows:

1. Each residential site shall be allowed an onsite sewage disposal system, within a section of land; along with a private potable water well, until twenty-five percent (25%) of the building sites have been used for residential building.

2. After public water distribution lines are installed and made functional to a section of land within the development, onsite sewage disposal systems shall be approved until the same section of land reaches a fifty percent (50%) density of residential building.

3. Commercial and multi-family buildings over four (4) living units shall be evaluated for onsite sewage disposal systems individually and separately.

4. The Lehigh Corporation shall furnish the Lee County Health Department an up-to-date report on densities of construction on each section of land and this report shall be made annually and beginning in December 1983.

5. The Lehigh Corporation shall cause all system failures to be corrected.

6. In the event that Lehigh Corporation; Lehigh Utilities, or any portion of the development changes ownership (excluding normal lot sales), this agreement shall require a written statement from the new owner/management agreeing to all provisions of this document. Said statement shall be presented to the Lee County Health Department within thirty (30) days from the ownership/management change.

This agreement shall be considered valid when the authorized representatives of the Lehigh Corporation and the Lee County Health Department have signed this document.

Executive V.P. & Secretary Date
The Lehigh Corporation
Authorized Representative

1/31/83
Date
Joseph W. Lawrence, M.D., Director

1-31-83
Date
Charles Martindale, R.S., Director
Environmental Health Section

Lehigh Acres Development, Inc.
201 East Joel Boulevard
LEHIGH ACRES, FLORIDA 33936
Telephone 369-2121

April 8, 1970

Lee County Health Department
Court House Addition
2115 Second Street
Fort Myers, Florida 33901

Attention: R. M. Stott, R. S.
Sanitarian Supervisor

Gentlemen:

Lehigh Acres Development, Inc. requests your approval of the following policy concerning septic tank permits within the area covered by the utility franchise, excepting Sections 32 and 33, Township 44 South, Range 27 East, Lee County, Florida, and amendments thereto, granted to Lehigh Utilities, Inc., a subsidiary of Lehigh Acres Development, Inc., September 3, 1958:

1. Septic tank permits will not be issued to any property owner or home builder until roads are completed along the frontage of the property under consideration.

2. Once roads are complete along the frontage of the property in question, septic tank permits will be issued in a land section up to and including the first 25 per cent of the lots of the section. Beyond this density no further permits will be issued until water lines are installed, connected to the previously built homes, and available for extension to future construction. Lehigh Acres Development, Inc. will install such lines at this time. At the completion of home building in 20 per cent of the land section, plans and specifications for the extension of the water lines must be submitted by Lehigh Acres Development, Inc., and approved by the Florida State Board of

Health preparatory for the construction which is to begin as stated above.

3. After construction of the water lines has commenced under a bona fide contract bringing service to the first 25 per cent of the lots in the section, and available for extension to future construction, septic tank permits will be issued for the next 25 per cent of the lots of the land section beyond which density no further permits will be issued until sewers are constructed and connected to the previously built homes. Lehigh Acres Development, Inc. will install such lines at this time. Upon completion of homes in 40 per cent of the section, plans and specifications for the sewer system to serve the previously built homes must be submitted by Lehigh Acres Development, Inc. to the Florida State Board of Health for approval in order that construction can proceed at the time density level reaches the 50 per cent point.

4. Lehigh Acres Development, Inc. will require its contractors for septic tank installation to perform percolation tests in each and every case, and to size the septic tanks and drain fields in each and every case, in accordance with Lee County Health Department criteria. Lehigh Acres Development, Inc. will require the contractor for the septic tank to make this installation in such a manner as to provide a maximum life of trouble free service for the unit. Tanks will be installed on lots at a location selected by Lehigh Acres Development, Inc., but preferably on the street side of the house.

5. Individual house wells which are installed prior to the construction of water lines will be built of suitable materials and chlorine sterilized prior to use by occupants.

6. Declarations of Restrictions formulated and filed in the Lee County Public Records by Lehigh Acres Development, Inc. require individual property owners to connect to utility systems when they are built to serve the properties in question.

7. Lehigh Acres Development, Inc. will maintain, or cause to be maintained, septic tanks installed after date of this letter agreement until tanks are replaced by sewers. Abandoned tanks will be disposed of in accordance with the State Sanitary Code in effect as of the date of this letter.

8. In consideration of the above, the Lee County Health Department will forward a letter to the Florida Land Sales Board indicating their approval of the above established policy, signed by the appropriate official of the Lee County Health Department together with a carbon copy of this correspondence also signed by the same official to Lehigh Acres Development, Inc.

Your early attention to this matter will be greatly appreciated.

Very truly yours,

LEHIGH ACRES DEVELOPMENT, INC.

Gerald H. Gould

GHG:rf

APPROVED:

R. M. Stott

R. M. Stott, R. S.
Sanitarian Supervisor
Leo County Health Department

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA
CIVIL ACTION

LEHIGH CORPORATION,

Plaintiff,

vs.

Case No. 91-2482 CA

LEE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,

C920557

Defendant.

STIPULATION AND SETTLEMENT AGREEMENT

This Agreement made as of 9th day of June, 1992 between Lehigh Corporation, a Florida corporation, ("Lehigh") and Lee County, a political subdivision of the State of Florida (the "County").

RECITALS

A. Lehigh is a corporation organized and existing under the laws of the State of Florida and the developer of Lehigh Acres, located in unincorporated Lee County, Florida; and

B. The County is the local government with jurisdiction over Lehigh Acres.

C. On September 27, 1990, Lehigh filed three Applications for Determination of Concurrency Vesting with the County, to wit:

Application File No. C-90-4882, (hereinafter "Application #1")

Application File No. C-90-4883, (hereinafter "Application #2")

Application File No. C-90-4884, (hereinafter "Application #3")

D. By letter dated February 18, 1991, the County notified Lehigh that the property covered by Application #1 was ineligible for vesting from the Lee County concurrency management regulations. No final determination was made with regard to Orange Villas, Section 26/44/27, Plat Book 1356, Pages 1147-1176 or Beacon Square, Section 5/45/27, recorded September, 1983 in Plat Book 1689, Pages 3846-3870.

E. On May 16, 1991, Lehigh filed a Request for Appeal of an Administrative Interpretation with respect to Application #1 (the "Administrative Appeal"). The Administrative Appeal is pending before the Lee County Hearing Examiner as of the date hereof (Case Number ADM-91-10).

F. By letter dated November 3, 1990, the County notified Lehigh that Lehigh and its successors in interest may complete development of property covered by Application #2 without compliance with the Lee County Concurrency Management Regulations. By letter dated January 6, 1992, the County issued a Certificate of Concurrency Exemption with respect to property included in Application #2.

G. Pursuant to letters dated November 9, November 14 and December 17, 1990, the County notified Lehigh that certain property included in Application #3 was vested for the purposes of concurrency. Other property included in Application #3 was found ineligible for concurrency vesting. On November 7, 1991, the County issued a Certificate of Concurrency Exemption with respect to the property included in Application #3. Both Certificates of Exemption are valid for three years from the date of issuance.

H. The property included in Application #3 which was deemed exempt from the Lee County Concurrency Management Regulations included all of Section 30, Township 43 South, Range 27 East, lying south of State Road 80, less out parcels ("Section 30"). Section 30 consists of 458 acres. Approximately 400 of those acres are zoned RM-2, which allows the construction of up to 14 residential units per acre or a maximum of 5,600 units.

I. On November 28, 1990 Lehigh filed a Request for Appeal of an Administrative Interpretation with respect to the property denied vesting pursuant to Application #3. The matter was heard before the Lee County Hearing Examiner on January 28, 1991. The Hearing Examiner denied the Appeal in a decision rendered in February, 1991. On April 2, 1991, Lehigh filed a Petition for Writ of Certiorari and/or Complaint for Declaratory Relief and/or Complaint to Enforce Final Judgment against the County in the Circuit Court of the Twentieth Judicial Circuit In and For Lee County, Florida, thereby challenging the denial of concurrency vesting with respect to such property (the "Judicial Appeal"). The Judicial Appeal is pending as of the date of this Agreement.

J. Lehigh and the County desire to amicably resolve the Administrative Proceeding and the Judicial Proceeding.

NOW THEREFORE, In consideration of the foregoing recitals, Lehigh and the County hereby agree and stipulate as follows:

1. Lehigh and its successors in interest may complete development of the property described in Exhibit "A" attached hereto and depicted in white (uncolored) on Exhibit "E" (the "Exempt Property") without compliance with the Lee County Concurrency Management Regulations. Such property shall remain subject to all other local land development regulations adopted pursuant to the Lee County Comprehensive Plan as may be amended from time to time, however, such regulations shall not effect the densities or intensities of use previously established in the Stipulation and Settlement Agreement dated December 27, 1988. The Certificate of Concurrency Exemption ("Certificate of Exemption") excuses the exempt property from compliance with the level of service standards set forth in the Lee County Concurrency Management Ordinance No. 89-33, as amended, and as may be further amended from time to time (the "Concurrency Ordinance"). Pursuant to Section 8.K. of the Concurrency Ordinance, the Certificate of Exemption is valid for three (3) years from the date of this Agreement. Three (3) years from the date of this Agreement, Lehigh or its successors in interest may renew the Certificate of Exemption, thereby extending the right to develop the exempt property as property exempt from the Lee County Concurrency Management Regulations.

2. The property described in Exhibit "B" attached hereto and depicted in red on Exhibit "E", is ineligible for concurrency vesting and shall be subject to all Lee County Land Development Regulations including concurrency. However, the County shall issue permits for the construction of single family residential units on the property described in Exhibit "B" which has been platted prior to 1971, notwithstanding the level of service standards set forth in the Lee County Comprehensive Land Use Plan.

3. Lehigh will consent to a reclassification of the status of Section 30 as follows: the section shall no longer be deemed vested and exempt from Lee County Concurrency Management Regulations.

In conjunction with the reclassification of Section 30, the County will establish a transferable credit based upon eight (8) residential units per acre or 3,200 residential units (the "transfer credit") which may be developed on certain property, as hereinafter described, previously denied concurrency vesting but located closer to existing infrastructure improvements than Section 30. In exchange, Lehigh will waive all claims of vesting with respect to the remaining 2,400 residential units previously found to be exempt from the Lee County Concurrency Management Regulations.

With respect to residential lots that were determined to be ineligible for vesting pursuant to Application #1, the County shall continue its current policy of issuing permits for construction

of single family residential dwelling units notwithstanding the level of service standards set forth in the Lee County Comprehensive Land Use Plan.

4. In consideration of the former exempt status of Section 30, which shall hereafter be subject to all Lee County land development regulations including concurrency, Lehigh and its successors in interest are and shall be entitled to develop certain property exempt from the Concurrency Management Regulations to the extent of the Transfer Credit, subject to the following:

a) The Transfer Credit shall not exceed a total of 3,200 residential units or the equivalent thereof, as provided under subparagraph b.) below, and Lehigh hereby waives any further rights in connection with the previous status of Section 30.

b) Lehigh or its successors in interest may convert all or any portion of the Transfer Credit from residential units to other uses ("Residential Unit Equivalents"), based upon the conversion table attached hereto as Exhibit "C".

c) Lehigh and its successors in interest may from time to time assign the Transfer Credit or any portion thereof to any property described on Exhibit "D" attached hereto and depicted in orange on Exhibit "F" (the "Eligible Property"), subject to the procedures provided for in subparagraph d.) below.

d) Whenever the Transfer Credit or any portion thereof is assigned to a specific parcel, Lehigh or its successor in interest shall provide written notice to the County of its intention to assign the Transfer Credit. The Notice shall include: (i) a legal description of the Eligible Property to which the Transfer Credit is being assigned (the "Receiving Parcel"); (ii) the number of residential units or Residential Unit Equivalents assigned from the Transfer Credit; (iii) a copy of a recorded instrument restricting the Receiving Parcel to the density of uses assigned; and (iv) an accounting which reflects all assignments of the Transfer Credit and which sets forth the remaining balance of the Transfer Credit, i.e., the number of remaining residential units or Residential Unit Equivalents eligible for assignment. Upon the County's receipt of this Notice, the Receiving Parcel shall be exempt from compliance with the level of service standards set forth in the Lee County Comprehensive Land Use Plan.

e) The assignment of the Transfer Credit in accordance with this paragraph shall not confer rights upon the Receiving Parcel beyond those permitted by existing zoning and further, shall not exempt the property from compliance with the Lee Comprehensive Land Use Plan and other Lee County Land Development Regulations with the exception of concurrency.

5. The Certificate of Concurrency Exemption issued pursuant to this Agreement shall not be affected by platting,

replatting or rezoning of the Exempt Property, provided the density and/or intensity of land use is not increased thereby. The density and/or intensity of land uses of Receiving Parcels shall be limited as set forth in Paragraph 4.e. of this Agreement.

6. In the event the County hereafter undertakes a Sector Plan for Lehigh Acres or any portion thereof, Lehigh shall cooperate with the County by providing any information and staff support that it is reasonably capable of providing, using its existing in-house capacity. In addition, Lehigh shall contribute money to the County to defray the cost of professional services necessary to develop the Sector Plan, in an amount equal to fifty percent (50%) of the amount expended by the County, up to a maximum reimbursement by Lehigh of $20,000. The scope and contents of such Sector Plan shall be at the sole discretion of the County. Alternately, at the County's sole discretion and upon notice to Lehigh, the service, support and reimbursement that Lehigh has committed to in this Section may be redirected to such other study or project that relates to the planning, traffic conditions or general aesthetics at Lehigh Acres.

7. This Stipulation and Settlement Agreement supersedes all previous certifications, determinations and agreements with respect to concurrent status for the property described in Exhibits "A", "B" and "D" and depicted in Exhibits "E" and "F" attached hereto. However, the Stipulation and Settlement Agreement entered into by the parties on December 27, 1988, as it pertains to density and intensity of use is not superseded hereby and is hereby ratified and shall remain in full force and effect.

8. Lehigh and the County hereby ratify and affirm that the settlement of the Administrative Proceeding and the Judicial Proceeding is in the public interest and the interests of the parties hereto.

9. This Agreement shall be deemed incorporated in any subsequent Concurrency Ordinance or Comprehensive Plan hereafter adopted and/or amended by the County.

AGREED ON this 9th day of June, 1992.

Ellen Wyskochil
WITNESS

LEHIGH CORPORATION

By: William Livingston
William Livingston, President
Address: 201 E. Joel Boulevard
Lehigh Acres, FL 33936

WITNESS

(3154D/F)

STATE OF FLORIDA)
)SS.
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 2nd day of June, 1992, by William Livingston, who is personally known to me ~~or who has produced~~ _____ ~~as identification~~ and who did not take an oath.

My Commission Expires: _____

Janet E. Allison
Notary Public

~~OFFICIAL NOTARY SEAL~~
JANET E. ALLISON
MY COMMISSION NUMBER
CC 143262
MY COMMISSION EXPIRES
OCTOBER 24, 1995

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

By: _____
Doug St. Cerny, Chairman

ATTEST:
CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

Approved as to form:

By: _____
Lee County Attorney

(3154D/F)

EXHIBIT "A"

"VESTED PROPERTY"

NOT COLORED ON EXHIBIT "E"

REMARKS	SEC.	TWP.	RGE.	PLAT BOOK	PAGE	REC. DATE
	1	44 S	27 E	15	3-4	4/61
	11	44 S	27 E	15	13	4/61
	12	44 S	27 E	15	14	4/61
	13	44 S	27 E	15	15	4/61
	14	44 S	27 E	15	16	4/61
	17	44 S	27 E	15	20-21	4/61
	19	44 S	27 E	15	26-27	4/61
	24	44 S	27 E	15	35	4/61
	25	44 S	27 E	15	36-37	4/61
	26	44 S	27 E	15	38-39	4/61
	27	44 S	27 E	15	40-41	4/61
	28	44 S	27 E	15	42-43	4/61
	29	44 S	27 E	15	44-45	4/61
	32	44 S	27 E	15	46	4/61
	36	44 S	27 E	15	54-55	4/61
MEADOWBROOK EST.	22&27	44 S	27 E	18	163-167	5/64
LAKEWOOD TERRACE	26	44 S	27 E	15	116-122	4/62
CARLTON PARK	32&33	44 S	27 E	20	1-4	8/64
UNITS 1&3 GLF.VW.E.	34	44 S	27 E	20	13-14	7/69
GOLFVIEW PARK	34	44 S	27 E	20	5-6	8/64
COUNTRY CLUB EST.	34	44 S	27 E	15	104-115	4/62
	1	44 S	26 E	15	58	4/61
	2	44 S	26 E	15	59	4/61
	11	44 S	26 E	15	60	4/61
	12	44 S	26 E	15	61	4/61
	13	44 S	26 E	15	62	4/61
EAST 1/2	14	44 S	26 E	15	63	4/61
	16	44 S	26 E	18	152-154	4/64
LEHIGH PARK	21	44 S	26 E	15	66	4/61
LEHIGH PARK	22	44 S	26 E	15	64-65	4/61
EAST 1/2	23	44 S	26 E	15	67	4/61
WEST 1/2 LEHIGH PK.	23	44 S	26 E	15	64	4/61
	24	44 S	26 E	15	68	4/61
	25	44 S	26 E	15	69-73	4/61
	26	44 S	26 E	15	75	4/61
NW 1/4	26	44 S	26 E	15	74	4/61
SOUTH 1/2	27	44 S	26 E	15	77	4/61
NORTH 1/2	27	44 S	26 E	15	76	4/61
SOUTH 1/2	28	44 S	26 E	15	78	4/61
EAST 1/2 OF NE 1/4	28	44 S	26 E	15	79	4/61

REMARKS	SEC.	TWP.	RGE.	PLAT BOOK	PAGE	REC. DATE
SOUTH 1/2	29	44 S	26 E	15	80	4/61
SOUTH 1/2	30	44 S	26 E	15	81	4/61
LEHIGH ESTATES	31	44 S	26 E	15	82-83	4/61
LEHIGH ESTATES	32	44 S	26 E	15	83-88-89	4/61
LEHIGH ESTATES	33	44 S	26 E	15	85-87-88	4/61
	35	44 S	26 E	15	91	4/61
	1	45 S	26 E	15	93	4/61
	2	45 S	26 E	15	94	4/61
	3	45 S	26 E	15	95	4/61
LEHIGH ESTATES	4	45 S	26 E	15	84-85-86	4/61
LEHIGH ESTATES	5	45 S	26 E	15	83-84-86	4/61
LEHIGH ESTATES	9	45 S	26 E	15	85	4/61
	10	45 S	26 E	15	96	4/61
	11	45 S	26 E	15	97	4/61
	12	45 S	26 E	15	98	4/61
	13	45 S	26 E	15	99	4/61
	14	45 S	26 E	15	100	4/61
	1	45 S	27 E	15	169-185	12/62
	2	45 S	27 E	15	186-205	12/62
TWIN LAKES EST.	3	45 S	27 E	15	206-221	12/62
WILLOW LAKE ADD. 1	4	45 S	27 E	18	155-162	5/64
	10	45 S	27 E	18	1-17	9/63
	11	45 S	27 E	15	148-168	12/62
	12	45 S	27 E	15	222-241	6/63
	13	45 S	27 E	18	18-35	9/63
	14	45 S	27 E	15	128-147	12/62
SOUTHEAST 1/4	36	43 S	27 E	15	101	4/61
	4	45 S	26 E	15	100	4/61
	9	45 S	26 E	15	100	4/61
	15	45 S	27 E	18	36-52	1/64
	21	45 S	27 E	18	53-69	1/64
	22	45 S	27 E	18	70-86	1/64
	23	45 S	27 E	20	20-36	7/69
	24	45 S	27 E	18	87-105	1/64
	25	45 S	27 E	18	106-122	1/64
	26	45 S	27 E	20	37-53	7/69
NORTH OF S.R. 82	27	45 S	27 E	18	123-137	1/64
NORTH OF S.R. 82	28	45 S	27 E	20	54-63	7/69
NORTH OF S.R. 82	29	45 S	27 E	20	64-66	7/69
NORTH OF S.R. 82	35	45 S	27 E	20	67-71	7/69
NORTH OF S.R. 82	36	45 S	27 E	18	138-147	1/64
SOUTHWEST 1/4	2	44 S	27 E	20	15-19	7/69
ADDITION 2	5	45 S	27 E	18	148-151	1/64
ADDITION 2	6	45 S	27 E	18	148-151	1/64

REMARKS	SEC.	TWP.	RGE.	PLAT BOOK	PAGE	REC. DATE
UNITS 1 - 14	3	44 S	26 E	26	1-20	7/71
UNITS 1 - 5	19	44 S	26 E	26	21-26	7/71
UNITS 1 - 8	20	44 S	26 E	26	27-35	7/71
UNITS 1 - 5	21	44 S	26 E	26	36-41	7/71
UNITS 8 - 15	29	44 S	26 E	26	42-50	7/71
UNITS 2 - 5	30	44 S	26 E	26	51-55	7/71
UNIT 1 - SOUTHWOOD	7	45 S	27 E	26	59-95	7/71
UNIT 31 - SOUTHWOOD	8	45 S	27 E	26	59-95	7/71
PARKWOOD SUB.	31	44 S	27 E	26	56-58	7/71
PARCELS IN SECTIONS 1,2,11,12,13,14,23, 24,25,26,27,28,29, 34,35 & 36		44 S	26 E	26	96-216	8/71
PARCELS IN SECTIONS 1,2,3,10,11,12,13 & 14		45 S	26 E	26	96-216	8/71
GREENBRIAR SUBDIVISION IN SEC. 3,4,5,6,7,8&9		44 S	27 E	27	1-82	11/71
PARKWOOD II	31	44 S	27 E	28	80-84	5/73
SOUTH OF S.R. 82	36	45 S	27 E	28	62-73	5/73
AMBERWOOD (W.L.E.)	4	45 S	27 E	28	74-79	5/73
PARKWOOD III	31	44 S	27 E	28	91-95	6/73
PARKWOOD IV	6	45 S	27 E	28	96-100	6/73
PARKWOOD V	6	45 S	27 E	28	101-105	6/73
PARKWOOD VI	6	45 S	27 E	28	106-110	6/73
PARKWOOD VII	6	45 S	27 E	28	111-115	6/73
	9	45 S	27 E	27	177-184	6/73
	16	45 S	27 E	27	167-176	6/73
MIRROR LAKES SEC. 16, 17,18,19 & 20		45 S	27 E	27	83-160	6/73
	16	44 S	26 E	27	185-193	6/73
LYNNBROOK PINES	28	44 S	26 E	34	95-99	3/82
WINDEMERE	8	44 S	27 E	34	81-86	1/82

ROBERTS, BAGGETT, LAFACE & RICHARD
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August 13, 1991

REPLY TO: Tallahassee

VIA FEDERAL EXPRESS

Timothy Jones, Esquire
Assistant County Attorney
Lee County Attorney's Office
2115 Second St.
P.O. Box 398
Ft. Myers, FL 33901

RE: Lehigh Acres Concurrency Vesting Application
File No. C90-4882 (ADM-91-04)

Dear Tim:

As I advised you by telephone on Monday, August 12, 1991, Steve Pfeiffer, General Counsel for the Department of Community Affairs ("DCA"), informed me that DCA is not in the business of issuing advisory opinions as to whether a specific development or project is vested pursuant to either the provisions of Section 163.3167(8), Florida Statutes, or common law equitable estoppel/vested rights. That responsibility, according to several declaratory statements issued by DCA, belongs to the local government.

While DCA will not issue such advisory opinions, I have discovered a declaratory statement entitled: Petition for Declaratory Statement by Orlando Central Park, Inc., DCA Case No. 89-DS-9B (March 26, 1990), a copy of which is attached hereto as Exhibit "A", which directly addresses our issue. In that declaratory statement DCA opined:

> In applying Section 163.3167(8), F.S., local governments should bear in mind that although this vesting provision is equitable in nature, it does not replace the common law doctrine of equitable estoppel. While it is not required, or specifically authorized, to incorporate the elements of equitable estoppel into any policy or decision involving statutory vesting, equitable estoppel still remains a remedy

which local governments should consider on a case by case basis. (p. 7) (e.s.)

Accordingly, DCA has clearly and specifically held that the common law doctrine of equitable estoppel has not been preempted or replaced by the provisions of Section 163.3167(8), Florida Statutes, and it still remains a remedy for those persons whose development approval does not squarely fit within the definition of a "final local development order."

This policy statement by DCA by no means stands by itself. DCA has routinely been approving local government comprehensive plans which contain vested rights provisions that speak both to statutory vesting and to common law equitable estoppel/vested rights. For example, the City of Tallahassee has adopted its own ordinance where it specifically notes that an applicant for a vested rights determination may rely upon either statutory vesting or the common law. A copy of the City's ordinance is attached hereto as Exhibit "B", and I encourage you to read its contents.

I have also enclosed a recent final order of the Division of Administrative Hearings in which common law equitable estoppel is applied to a project for which statutory vesting concededly doesn't exist. Anthony, et al. v. City of Tallahassee, 13 FALR 31 (December 10, 1990), a copy of which is attached as Exhibit "C". While the project was denied vested status, common law equitable estoppel was still deemed an appropriate criterion.

As special counsel for the Hamilton County Board of County Commissioners, I drafted a vested rights provision for their comprehensive plan in which is identified both statutory vesting and common law vesting. A copy of an excerpt to the plan which I drafted is attached hereto as Exhibit "D". This language, by the way, was specifically reviewed by DCA's attorneys, in particular Ken Goldberg, Assistant General Counsel for DCA, who signed off on it.

Moreover, as to the suggestion in some quarters that the provisions of Section 163.3167(8) have preempted or displaced common law equitable estoppel, I must note the Florida Supreme Court's decision in Yorke v. Noble, 490 So. 2d 29 (Fla. 1986), where the Court held that the doctrine of equitable estoppel is deeply ingrained in Florida jurisprudence and should not be abrogated except by specific legislative mandate. Accord Hittel v. Rosenhagen, 492 So. 2d 1086 (Fla. 4th DCA 1986). I see nothing in the provisions of Chapter 163, Florida Statutes, that would constitute such a specific legislative mandate to curtail the

application of the doctrine, particularly since the legislative history of Chapter 85-55, Laws of Florida, about which Tom Pelham and I wrote an FSU Law Review article, does not clearly evince a legislative intent to do so.

I have also discussed this particular issue with Tom Pelham, former Secretary for DCA, as well as with Paul Bradshaw, former Director for the Division of Resource Planning and Management and now counsel for the Florida Audubon Society. Both of them clearly opined that a completed subdivision, such as the ones at issue in this application, should be considered vested under the common law even if statutory vesting may not strictly apply.

My thesis is also supported by a relatively recent article in The Florida Bar Journal entitled" "Did Equitable Estoppel Survive the Growth Management Act?" Fla. Bar J., Volume LXIV, No. 3 (March 1990), whether the authors advance numerous reasons as to why common law equitable estoppel survives the Growth Management Act. A copy of the article is attached as Exhibit "E".

However, I must also state that I believe a good argument can be made that the statutory vesting provisions of Section 163.3167(8) apply to these subdivisions as well. In another declaratory statement entitled: General Development Corporation v. Department of Community Affairs, DCA Case No. 88-DS-1 (September 19, 1988), a copy of which is attached hereto as Exhibit "F", DCA held:

> For the vesting provisions of Subsection 163.3167(8) to be applicable to non-DRI projects, the project must have received a final local development order and development must have commenced and be continuing in good faith. If the non-DRI development meets these criteria, it is the Department's position that the same protection afforded DRI development orders would apply to the final local development order conditions. Subsection 163.3164(5), Florida Statutes (1987), provides that the term "development" has the same meaning given by Section 380.04 which contains a broad definition of development and gives detailed examples of what is and is not development. A final local development order, for purposes of Subsection 163.3167(8), Florida Statutes, must be some

> government action which authorizes commencement of an activity which falls within the definition of development in Section 380.04, Florida Statutes. That activity must have commenced and must be continuing in good faith. The questions of whether a final local development order had been issued and whether development has commenced and is continuing in good faith must be determined by the local government and not by the Department. If these conditions exist, it is clearly legislative intent, as specified in Subsection 163.3167(8), that neither a revised comprehensive plan nor development regulations adopted pursuant thereto are to limit or modify the developer's right to complete that development. (pp. 17-18) (e.s.)

The operative question, then, is whether the subdivision plat approvals for these subdivisions amounted to such a "final development order." Again, DCA has provided appropriate guidance in its declaratory statement, In the Matter of Petition for Declaratory Statement by Orlando Central Park, Inc., DCA Case No. 89-DS-9B (March 26, 1990) (Exhibit "A"), where DCA held:

> Adding to the difficulty of defining "final local development order," is the fact that there is no uniformity among local governments as to terminology, criteria, and procedures of the development order process. Accordingly, local governments must be allowed broad discretion to interpret "final local development order" in order to accomplish the objectives of Chapter 163, F.S., and Rule 9J-5, F.A.C. Each local government must examine its own development order process and decide at what point in its process a development order becomes final.
>
> In deciding whether a development order is final, a local government may use the criterion of whether it no longer has discretion in relation to the subject of the order. A local government may even conclude

> that there is more than one type of development order in which it executes a final discretionary act and further distinguish between those development orders for various vesting purposes. For example, a local government may conclude that approval of an unrecorded plat may constitute a final local development order for purposes of establishing density or intensity of use, but not for purposes of concurrency. In order to vest under Section 163.3167(8), F.S., as to concurrency, a local government may require a developer to have received approval of infrastructure at a point further along in the process, such as final plat approval. (pp. 6-7)

I believe that the subdivision plat approvals constituted "final local development orders" for purposes of Section 163.3167(8). They specifically allowed development, as that term is defined by Section 380.04, to occur. After all, if they didn't do so, then how can one explain away the fact that these subdivisions are completely built out, that is, they have been provided with the requisite streets and roads, water and sewer, drainage facilities, and the like in accordance with Lee County regulations and various letters of agreement between Lehigh Corporation and Lee County. In the truest since of the term, then, these subdivision plat approvals do constitute "final development orders" for purposes of Section 163.3167(8), and I would request that you revisit your determination that they do not.

What DCA is really trying to get at are those antiquated subdivisions which exist on paper only; no "development" of those paper subdivisions has ever occurred, there are no streets and roads, water and sewer, drainage facilities, or the like. Clearly, such paper subdivisions have no claim to a vested rights status. On the other hand, however, we are not dealing with paper subdivisions; rather, we are dealing with completed subdivisions, and everyone I have spoken to at DCA agrees that a completed subdivision such as the ones discussed in this letter are and should be deemed vested under the consistency and concurrency management standards of the Lee County Comprehensive Plan.

Once you have had an opportunity to review the contents of this letter and the attached materials, let's get together and see if we can resolve this impasse. I sincerely believe that Lee County need not concern itself with whether DCA would challenge a

vesting determination as to the subdivisions included in this application, and I hope that after reviewing these materials you and your staff will agree.

Very truly yours,

William L Hyde

William L. Hyde
Attorneys for LEHIGH CORPORATION

Attachments

cc: Mr. Bill Livingston (w/enclosures)

WLH/LEHIGH/THJ/JONES.LTR

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

In the Matter of:	)	
	)	
Petition for Declaratory Statement by Orlando Central Park, Inc.	)	CASE NO. 89-DS-9B
	)	

DECLARATORY STATEMENT

On December 20, 1989, the Department of Community Affairs (Department) received a Petition for Declaratory Statement from Orlando Central Park, Inc. (OCP) requesting pursuant to Section 120.565, Fla. Stat., an interpretation of the vesting status under Section 163.3167(8), Fla. Stat., of certain OCP properties which Orange County has determined have been issued final local development orders, have commenced construction, and are continuing construction in good faith.[1] The following issues were specifically raised by OCP:

I. Whether those portions of the OCP developments which Orange County believes have received a final local development order, have commenced development, and are continuing in good faith are vested pursuant to Section 163.3167(8), Fla. Stat., and may not be limited or modified by the comprehensive plan requirements of Chapter 163, Fla. Stat.

---

[1] On December 20, 1989, OCP also filed with the Department a separate Petition for Declaratory Statement requesting an interpretation of OCP developments for purposes of an exemption under Section 163.3167(8), Fla. Stat., as authorized developments of regional impact. DCA Case No. 89-DS-9B.

A

EXHIBIT "A"

II. Whether the vested rights accorded to OCP under Section 163.3167(8), Fla. Stat., "run with the land" and are transferable to a subsequent purchaser.

FINDINGS OF FACT

1. OCP is the owner and developer of Orlando Central Park, South Park, Orlando Central Park South and Plaza International in Orange County, herein referred to as the OCP developments.

2. At its June 15, 1976 meeting, the Orange County Board of County Commissioners (BCC) accepted the Orlando Central Park Master Plan Update and Primary Water Control System, 1976. Specifically, the Master Plan Update included an analysis of existing development, a traffic plan, an analysis of existing zoning, a soil and vegetation analysis, an analysis of topography and drainage, a future use plan, a conceptual water management plan, and a conceptual land use plan. The Primary Water Control System Plan details the stormwater system for the OCP developments.

3. On April 26, 1979, the BCC gave preliminary approval to the Preliminary Subdivision Plan (PSP) for the Plaza International development phase, subject to further staff review. The BCC gave final approval to the Plaza International PSP on May 3, 1979.

4. On July 20, 1982, the BCC approved the PSP for the Orlando Central Park development phase.

5. On January 31, 1984, the BCC approved the PSP for the South Park development phase.

6. On October 25, 1985, the BCC approved the PSP for the Orlando Central Park South development phase.

7. In addition to the acceptance of the Master Plan Update and Primary Water Control System and the PSP approvals, OCP has recorded plats with Orange County for portions of each phase of the OCP developments.

8. By letter dated July 14, 1989, OCP requested that Orange County determine the extent to which the County has issued final local development orders, as defined by Section 163.3167(8), Florida Statutes, for the OCP developments, and whether development has commenced and is continuing in good faith.

9. By letter dated October 23, 1989, the BCC determined that all platted portions of the OCP developments have received a final local development order. In that same letter dated October 23, 1989, Orange County also determined those developments which received a final local development order "have commenced and are commenced [sic] in good faith." The County did not explain its criteria or factual basis for determining that construction had commenced and was continuing in good faith.

CONCLUSIONS OF LAW

Preliminary Issues

As the designated state land planning agency under Chapter 163, Fla. Stat., the Florida Department of Community Affairs has jurisdiction to issue this Declaratory Statement pursuant to Section 120.565, Fla. Stat. (1989). This Declaratory Statement is timely issued based on an extension of time provided by OCP which extended the deadline until March 26, 1990.

OCP has adequately presented sufficient facts for the Department to address the issues raised in the Petition for Declaratory Statement. Accordingly, OCP's request that the Department hold a hearing prior to issuance of its Declaratory Statement is hereby denied.

This Declaratory Statement is based on the facts and supporting information presented to the Department by OCP in its Petition and Supplemental Memorandum of Law. No independent investigation has been conducted by the Department as to the representations made by OCP. This Declaratory Statement constitutes an interpretation of the law as it relates to a certain set of circumstances represented to the Department by OCP and is not to be construed as agency verification of those facts.

Petitioner's Issue I

In 1985 the Florida Legislature repealed the Local Government Comprehensive Planning Act of 1975 and adopted the Local Government Comprehensive Planning and Land Development Regulation Act (the 1985 Act). Chapter 85-55, Laws of Florida. The Act retained the Section 163.3167 exemption for authorized developments of regional impact under Chapter 380 and added an additional vesting provision relating to final local development orders:

> Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith. Section 163.3167(9), Fla. Stat., (1985), amended Section 163.3167(8), Fla. Stat., (Supp. 1986).

OCP suggests that if its developments which have received final local development orders meet the requirements of Section 163.3167(8), Fla. Stat., that Chapter 163 is wholly inapplicable to those developments. The Department concluded in a previous declaratory statement that the purpose of this provision was to "'grandfather' or 'vest' a developer's rights to complete his project as originally approved by the local government under its existing comprehensive plan and land development regulations." General Development Corp. v. DCA, Case No. 88-DS-1 (Sept. 19, 1988). At this time Orange County has not adopted a comprehensive plan under the 1985 Act. Orange County would not

be constrained by Section 163.3167(8), Fla. Stat., from imposing Chapter 163 requirements on OCP developments under a comprehensive plan adopted prior to the 1985 Act.

Section 163.3164(6), Fla. Stat., defines "development order" as an order granting, denying, or granting with conditions an application for a development permit. There is no statute or rule, however, which defines "final local development order".

Adding to the difficulty of defining "final local development order," is the fact that there is no uniformity among local governments as to terminology, criteria, and procedures of the development order process. Accordingly, local governments must be allowed broad discretion to interpret "final local development order" in order to accomplish the objectives of Chapter 163, F.S., and Rule 9J-5, F.A.C. Each local government must examine its own development order process and decide at what point in its process a development order becomes final.

In deciding whether a development order is final, a local government may use the criterion of whether it no longer has discretion in relation to the subject of the order. A local government may even conclude that there is more than one type of development order in which it executes a final discretionary act and further distinguish between those development orders for various vesting purposes. For example, a local government may conclude that approval of an unrecorded plat may constitute a final local government order for purposes of establishing density or intensity of use, but not for purposes of concurrency. In

order to vest under Section 163.3167(8), F.S., as to concurrency, a local government may require a developer to have received approval of infrastructure at a point further along in the process, such as final plat approval.

In applying Section 163.3167(8), F.S., local governments should bear in mind that although this vesting provision is equitable in nature, it does not replace the common law doctrine of equitable estoppel. While it is not required, or specifically authorized, to incorporate the elements of equitable estoppel into any policy or decision involving statutory vesting, equitable estoppel still remains a remedy which local governments should consider on a case by case basis.

It appears from the information provided by OCP that Orange County has acted within its discretion in concluding that certain OCP properties have received final local development orders, however, the question is unripe as to whether construction is "continuing in good faith" for purposes of Section 163.3167(8), Fla. Stat. The point of inquiry for the vesting of final local development orders is at the time of plan adoption. Orange County's plan is currently scheduled for submission to the Department for review on December 1, 1990. Rule 9J-12.007(6), F.A.C. As well over one year will have transpired between Orange County's determination of construction having continued in good faith and plan adoption, it is possible that without further construction activity OCP may not meet the requirements of Section 163.3167(8), Fla. Stat., at the time of adoption.

Petitioner's Issue II

The Department declines to discuss in this Declaratory Statement the issue as to whether vesting under Section 163.3167(8), Fla. Stat., "runs with the land". Section 120.565, F.S., provides for an agency opinion "as to the applicability of a specified statutory provision... as it applies to the petitioner in his particular set of circumstances only." Section 120.565, F.S. (1989) (emphasis added). No specific information was provided by OCP as to an actual fact pattern involving OCP and any particular subsequent owner. Without the benefit of such information, the Department is asked to overreach its authority in issuing declaratory statements by providing an abstract legal opinion.

This Declaratory Statement constitutes final agency action pursuant to Chapter 120, Fla. Stat. Any party who is adversely affected by this Declaratory Statement is entitled to judicial review pursuant to Section 120.68, Fla. Stat., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 2740 Centerview Drive, Tallahassee, Florida 32399-2100, and by filing a copy of the Notice of Appeal, accompanied by the appropriate filing fees, with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Declaratory Statement is filed with the Clerk of the Department.

Done and Ordered this 26th day of March, 1990 in Tallahassee, Florida.

Thomas D. Pelham

Thomas G. Pelham
Secretary
Department of Community Affairs
2740 Centerview Drive
Tallahassee, FL 32399-2100
(904) 488-0410

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Department Clerk, receipt of which is hereby
acknowledged.

Jane R. Bass 3/26/90

Department Clerk Date

JUL 2 3 1990

ORDINANCE NO. 90-O-0043AA

AN ORDINANCE OF THE CITY OF TALLAHASSEE, FLORIDA, TO BE KNOWN AS THE VESTED RIGHTS REVIEW ORDINANCE; ESTABLISHING AN ADMINISTRATIVE PROCESS FOR PROPERTY OWNERS TO OBTAIN A DETERMINATION AS TO WHETHER THEIR PROPERTY IS EXEMPT FROM THE CONSISTENCY AND CONCURRENCY PROVISIONS OF THE 2010 COMPREHENSIVE PLAN; PROVIDING AN ADMINISTRATIVE APPEAL PROCESS; PROVIDING EXEMPTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Section 163.3167, Florida Statutes, required the City of Tallahassee to prepare a comprehensive plan as scheduled by the Department of Community Affairs; and,

WHEREAS, the 2010 Comprehensive Plan was submitted to the Department of Community Affairs on February 1, 1990, for review; and,

WHEREAS, zoning and other land use controls exist to promote the general welfare by regulating land development and can rationally serve their purpose only if they are preceded and supported by a planning process that identifies and evaluates community needs and objectives; and,

WHEREAS, the ultimate effectiveness of the planning process is undermined if land development proceeds in a manner inconsistent with the policies set forth in the 2010 Comprehensive Plan; and,

EXHIBIT "B"

WHEREAS, it is the responsibility of the Commission to adopt regulations that adequately plan for and guide growth and development within the City and to ensure that existing rights of property owners are preserved in accord with the Constitutions of the State of Florida and the United States; and,

WHEREAS, existing zoning does not create any specific rights to development densities or intensities under the 2010 Comprehensive Plan; and,

WHEREAS, the determination of vested development rights will ensure due process to anyone that may have a claim to vested development rights; and,

WHEREAS, the City of Tallahassee, in adopting this ordinance, will establish the sole procedures for the determination of vested development rights of any landowner in the City of Tallahassee.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF TALLAHASSEE, FLORIDA, AS FOLLOWS:

SECTION I. STATEMENT OF INTENT.

This ordinance establishes the sole administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the 2010 Comprehensive Plan. Said administrative procedures shall provide determinations for the consistency of development with the densities and intensities set forth in the 2010 Comprehensive Plan and

that development is not subject to the concurrency requirements of the 2010 Comprehensive Plan.

SECTION II. DEFINITIONS.

1. BUILDING PERMIT. As used in this ordinance shall mean a permit to construct or reconstruct any structure, having a roof, and used or built for a shelter enclosure of persons, animals, or property of any kind. This definition does not include foundation permits.

2. CONTINUING GOOD FAITH. As used in this ordinance shall mean the final development order for a project has not expired, and no period of ninety (90) consecutive days passes without the occurrence, on the land, of development activity which significantly moves the proposed development toward completion, unless the developer establishes that such ninety (90) day lapse in development activity was due to factors beyond the developer's control or unless development activity authorized by a final development order has been completed on a significant portion of the development subject to said final development order and has significantly moved the entire development toward completion.

3. DEVELOPMENT. As used in this ordinance shall mean the particular development activity authorized by the unexpired development order issued for a specific project.

4. DIRECTOR. The Tallahassee-Leon County Director of Planning or his designated representative.

5. FINAL DEVELOPMENT ORDERS. The following unexpired development orders shall be considered to be final development orders for purposes of a determination of vested rights in a previously-approved development:

a. Exempt subdivision;

b. Minor subdivision;

c. Preliminary subdivision plat approval;

d. Final subdivision plat approval;

e. Final site plan approval (pursuant to County Ordinance 88-16);

f. Approval of a P.U.D. concept plan;

g. Approval of a P.U.D. final development plan;

h. Building permit; and

i. Any other development order which approved the development of land for a particular use or uses at a specified intensity of use and which allowed development activity on the land for which the development order was issued.

6. LOT OF RECORD. As used in this ordinance, shall mean a designated parcel, tract or area of land established by plat, metes and bounds description, or otherwise permitted by law, to be used, developed or built upon as a unit and which existed in the records of the Leon County Property Appraiser upon the effective date of the City of Tallahassee Subdivision Regulations, July 1, 1984.

7. STAFF COMMITTEE. Shall consist of the following persons or their designated representatives: the City Attorney, the Director of Planning, and the Director of the Growth Management Department.

8. SUBSTANTIAL DEVELOPMENT. As used in this ordinance shall mean that all required permits necessary to continue the development have been obtained; permitted clearing and grading has commenced on any significant portion of the development subject to a single final development order; and the actual construction of water and sewer lines, or streets, or the stormwater management system, on said portion of the development is complete or is are progressing in a manner that significantly moves the entire development toward completion.

Section III. ADMINISTRATIVE PROCEDURES.

1. EXEMPTIONS.

a. The following categories shall be presumptively vested for the purposes of consistency with the 2010 Comprehensive Plan and concurrency as specified in the 2010 Comprehensive Plan and shall not be required to file an application to preserve their vested rights status:

1. All lots within a subdivision recorded as of July 16, 1990, or lots in approved unrecorded subdivisions for which streets, stormwater management facilities, utilities and other infrastructure required for the development have been completed as of July 16, 1990.

The Tallahassee-Leon County Planning Department shall maintain a listing of such exempt subdivisions.

2. All active and valid building permits issued prior to July 17, 1990. All technically complete building permit applications received by the Building Inspection Department on or before July 2, 1990, and subsequently issued, shall be vested under the provisions of the 2010 Comprehensive Plan, regardless of date of issuance.

3. Any structure on which construction has been completed and a certificate of occupancy issued if a certificate of occupancy was required at time of permitting.

4. All lots of record as of July 1, 1984, not located within a subdivision, but only to the extent of one single family residence per lot.

2. APPLICATION PROCEDURES.

a. The owner shall request a determination of vested rights by filing a technically complete, sworn application and the application fee with the Planning Department, within one hundred twenty (120) calendar days of July 16, 1990, upon a form to be provided for that purpose, setting forth the following information:

1. The name and address of the applicant, who shall be the owner or a person authorized to apply on behalf of the owner; if the property is owned by

more than one person, any owner or an authorized agent of the owner may apply;

2. A legal description and survey of the property which is the subject of the application;

3. The name and address of each owner of the property;

4. A site or development plan or plat for the property;

5. Identification by specific reference to any ordinance, resolution, or other action of the City, or failure to act by the City upon which the applicant relied and which the applicant believes to support the owner's vested rights claim notwithstanding an apparent conflict with the 2010 Comprehensive Plan;

6. A statement of facts which the applicant intends to prove in support of the application; and,

7. Such other relevant information that the Director may request.

b. Failure to timely file an application requesting a determination within the prescribed time limits shall constitute a waiver of any vested rights claim by the owner of the property.

c. The City Commission shall establish an application fee by resolution and said application fee shall

be included with the application for a determination of vested rights.

d. At any time during or after the application period, the Director may waive the maximum calendar day response time set forth in the ordinance, except as set forth in Section III, 2.a, to a date certain. Said waiver may be applicable to any step in the vested rights determination procedure upon the Director's determination that the volume of applications received exceeds the capacity of staff to process the applications within the stated time limits or upon the applicant's reasonable request.

3. DETERMINATION PROCEDURES.

a. Planning Department staff shall screen the application to determine whether it is technically complete. Technically incomplete applications shall be returned to the applicant with written notification of deficient items not provided as required by this ordinance in Section III, 2, a, 1-7. Upon accepting a technically complete application, for which the application fee has been submitted, staff shall review the application and make a final determination within twenty (20) calendar days whether or not the application clearly and unequivocally has vested status.

(1) Within seven (7) calendar days after receipt of an application, staff shall make a

determination to ensure the application is technically complete. If not technically complete, the application shall be returned to the applicant immediately and the applicant shall be granted ten (10) additional calendar days to complete the application. This policy shall be in effect during the one hundred twenty (120) calendar day application period and may at a maximum, extend the one hundred twenty (120) calendar day application period by ten (10) calendar days only once.

b. Within seven (7) calendar days after making a final determination of vested status Planning Department staff shall provide the applicant with written notification of the determination of vested status. The owner shall have the right to rely upon such written notification that the owner is vested and the determination that the owner is vested shall be final and not subject to appeal, revocation or modification.

c. In the event Planning Department staff recommends that a hearing before the Staff Committee is necessary to make a determination, the Director shall set a date for a hearing to be held by the Staff Committee within fifteen (15) calendar days of the staff recommendation and shall notify the applicant and the Staff Committee of the date, time, and place of the hearing. The hearing before the Staff Committee shall also be granted to the applicant, upon written request to the Director, if the applicant

desires to challenge the decision made by Planning Department staff. The applicant may waive the hearing before the Staff Committee at his or her option. The notice shall be mailed to the applicant not less than ten (10) calendar days prior to the date of the hearing. At the applicant's option and with Staff Committee concurrence, stipulations and sworn affidavits may be submitted in lieu of testifying at the Staff Committee hearing.

d. Conduct; recording of Staff Committee hearing. At the hearing, the applicant shall present all of the owner's evidence in support of the application. The rules of evidence in judicial proceedings shall not be applicable, but all testimony shall be under oath and witnesses shall be subject to cross-examination. Copies of documents shall be acceptable as evidence if commonly accepted authentication procedures are followed. The City shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost. At the conclusion of the testimony, the Staff Committee shall adopt a decision of approval, denial, approval with conditions, or to continue the proceedings to a date certain. A written recordation of the decision shall follow in not more than ten (10) calendar days. A Staff Committee decision to grant vested status

shall be final and not subject to appeal, revocation or modification.

e. Appeals to the hearing officer.

1. Purpose. It is the purpose of this section to provide an administrative process for appealing decisions rendered by the Staff Committee or providing a Hearing Officer hearing if the applicant has waived the Staff Committee hearing, prior to any available recourse in a court of law. In particular, it is intended that such administrative relief be provided in the most professional, objective, and equitable manner possible through the appointment of a hearing officer to adjudicate matters as provided herein. The function of the hearing officer shall be to serve as the third step of a three-step administrative process relating to the determination of vested rights. No party shall be deemed to have exhausted his or her administrative remedies for the purpose of seeking judicial review unless the party first obtains review of the staff or Staff Committee's decision by a hearing officer as provided herein.

2. In cases that have a Staff Committee hearing, the Hearing Officer "appeal" process provided in this ordinance is designed to allow for an appeal of Staff Committee action after a full and complete hearing. This "appeal" is not intended to mean an appeal in the traditional sense, that is, only a review of the Staff

Committee record of their hearing. The Hearing Officer "appeal" shall be construed in its broadest, nontechnical sense, which is merely an application to a higher authority for a review of the Staff Committee action taken.

3. If the Staff Committee record of their hearing is full and complete, the Hearing Officer may determine that the record is the only evidence that is necessary. However, the Hearing Officer may determine that additional evidence and oral or written testimony, including cross-examination, is necessary to properly evaluate the Staff Committee's action and render a decision as to its validity. The Hearing Officer shall have the authority to determine the need for additional evidence and/or testimony.

4. Applicability. The property owner may appeal to the Hearing Officer, a decision rendered by the Staff Committee on an application for a vesting determination.

5. Filing for appeal. The procedure for filing an appeal shall be as follows:

a. Appeals shall be commenced by filing a notice of appeal with the Director within fifteen (15) calendar days of the date the decision of the Staff Committee is received by the applicant or within fifteen (15) calendar days of the date the Staff Committee hearing is waived by the applicant. A copy shall also be provided to the City Clerk.

b. The notice of appeal shall set forth in detail the basis of the appeal.

c. All expenses associated with the Hearing Officer appeal process, except attorney fees, shall be the responsibility of the non-prevailing party.

d. The City shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost.

e. In any case where a notice of appeal has been filed, the decision of the staff or Staff Committee shall be stayed pending the final determination of the case.

f. Following the hearing, the Hearing Officer shall prepare the written findings and decision; copies of the findings and decision shall be mailed by the Hearing Officer to each party to the appeal and to the Director, with a copy provided to the City Clerk.

6. Conduct of the hearing. Conduct of the hearing before the Hearing Officer shall be as follows:

a. The Hearing Officer shall set forth at the outset of the hearing the order of the proceedings and the rules under which the hearing will be conducted.

b. The order of presentation at the hearing shall be as follows:

1. Receipt of the transcript minutes and exhibits from the Staff Committee, if any.

2. Opening statements by the parties.

3. Appellant's case.

4. Respondent's case.

5. Rebuttal by appellant.

6. Summation by respondent.

7. Summation by appellant.

8. Conclusion of the hearing by the Hearing Officer.

c. The record of the Staff Committee's hearing and decision, including all exhibits, shall be received and constitute a part of the record.

d. The Hearing Officer shall have the authority to determine the applicability and relevance of all materials, exhibits, and testimony and to exclude irrelevant, immaterial, or repetitious matter.

e. The Hearing Officer is authorized to administer oaths to witnesses.

f. A reasonable amount of cross-examination of witnesses shall be permitted at the discretion of the Hearing Officer.

g. The time for presentation of a case shall be determined by the Hearing Officer.

h. The Hearing Officer may allow the parties to submit written findings of fact and conclusions of law following the hearing, and shall advise the parties of the timetable for so doing if allowed.

7. Decision. The decision of the Hearing Officer shall be based upon the following criteria and rendered as follows:

a. The Hearing Officer shall review the record and testimony presented at the hearing before the Staff Committee, if any, and at the Hearing Officer's hearing. Although additional evidence may be brought before the Hearing Officer, the hearing shall not be deemed a "hearing de novo", and the record before the Staff Committee shall be incorporated into the record before the Hearing Officer, supplemented by such additional evidence as may be brought before the Hearing Officer. Any direct appeal from a staff determination shall be deemed a "hearing de novo."

b. The Hearing Officer shall be guided by the previously adopted Comprehensive Plan, the adopted 2010 Comprehensive Plan, the Land Development Regulations, this ordinance, and established case law.

c. The burden shall be upon the appellant to show that the decision of the staff or Staff Committee cannot be sustained by a preponderance of evidence

or the staff or Staff Committee decision departs from the essential requirements of law.

d. The Hearing Officer's determination shall include appropriate findings of fact, conclusions of law, and decisions in the matter of the appeal. The Hearing Officer may affirm, affirm with conditions, or reverse the decision of the staff or Staff Committee.

e. The Hearing Officer shall file his written determination on each appeal with the Director within thirty (30) calendar days of the date of the appeal hearing and a copy shall be provided to the City Clerk and the applicant.

f. The decision of the Hearing Officer shall be final, subject to judicial review.

8. Judicial Review.

Judicial review of the Hearing Officer's decision is available to the property owner and the City and shall be by common-law certiorari to the circuit court. In any case where judicial review is sought, the decision of the Hearing Officer shall be stayed pending the final determination of the case.

4. APPOINTMENT AND QUALIFICATIONS OF HEARING OFFICER.

a. The City Commission shall provide a Hearing Officer to conduct appeal hearings. When available,

Hearing Officers shall be from the Division of Administrative Hearings, Department of Administration, State of Florida.

b. A person recommended for appointment as Hearing Officer shall be duly licensed, registered, or certified to practice such profession in the state, pursuant to the standards established by DOAH.

c. A person appointed as Hearing Officer shall possess the requisite knowledge of Florida land use practices and relevant land use, vesting, statutory and case law.

d. No Hearing Officer shall act as agent or attorney or be otherwise involved with any matter which will come before the City during the term of the Hearing Officer's appointment. Further, no Hearing Officer shall initiate or consider ex parte or other communication with any party of interest to the hearing concerning the substance of any proceeding to be heard by the Hearing Officer; except such expert advice as the Hearing Officer may determine appropriate and solicit.

SECTION IV. VESTING DETERMINATION CATEGORIES.

1. Vested Development Rights.

The staff, Staff Committee and the Hearing Officer shall be guided by the following rules:

a. Common Law Vesting

(1) A right to develop or to continue the development of property notwithstanding the 2010 Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner, acting in good faith upon some act or omission of the City, has made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property.

b. Statutory Vesting

(1) The right to develop or to continue the development of property shall be found to exist if:

A valid and unexpired final development order was issued by the City prior to February 1, 1990, substantial development has occurred on a significant portion of the development authorized in a single final development order, and is completed or development is continuing in good faith as of July 16, 1990. It shall not be in good faith under this section for commercial property within residential plats to have had no development activity within the ninety (90) days preceding July 16, 1990.

(2) Each statutory vesting determination also requires that all material requirements, conditions,

limitations, and regulations of the development order have been met.

(3) The right to develop or continue the development of a Planned Unit Development shall be found to exist if the Planned Unit Development was subject to a valid and unexpired final development order issued prior to July 16, 1990. However Planned Unit Developments approved prior to February 1, 1990 must have commenced substantial development on the Planned Unit Development consistent with the Planned Unit Development plan as approved and continued development in good faith as of July 16, 1990 in order to qualify for vesting under this subparagraph.

c. Expiration of Final Development Orders

All final development orders shall expire in one year or such shorter time as may be adopted unless it is determined that substantial development has occurred and is continuing in good faith.

d. Zoning

A zoning classification or a rezoning does not guarantee or vest any specific development rights.

2. Developments of Regional Impact

a. Notwithstanding any inconsistency with the 2010 Comprehensive Plan, developments of regional impact, or any unsubstantial deviation therefrom, which were approved pursuant to Chapter 380, Florida Statutes, prior to the submittal of the 2010 Comprehensive Plan, shall be

allowed to be completed as originally approved as provided herein. Further development orders may be issued for such developments of regional impact, authorizing the development as originally approved, subject, however, to the following provisions:

(1) After the submission of the 2010 Comprehensive Plan, any development of regional impact that was issued a development order prior to the effective date of the 1985 Growth Management Act, October 1, 1985, and has not substantially and continuously moved toward completion of said development and within an approved phasing schedule, shall be required to apply for a determination of vested development rights and possible requirements for consistency with the 2010 Comprehensive Plan, prior to commencement or continuation of development.

(2) Any development of regional impact issued a development order subsequent to the effective date of the 1985 Growth Management Act, October 1, 1985, and which development order contains an expiration date, is exempt from this ordinance. Provided, however, that when the local government issuing a development order expressly finds that compliance with the 2010 Comprehensive Plan or with a regulation, limitation, condition, or requirement, subsequently imposed pursuant to the 2010 Comprehensive Plan, is necessary to prevent significant and probable harm to the health, welfare, or safety of the public or of any

individual or group of property owners, residents, or occupants, compliance with such regulation, limitation, condition, or requirement may be made a condition of the development order.

3. Concurrency.

a. Any final development order issued on or after February 1, 1990 shall not create vested rights for additional phases or additional development not expressly authorized by the initial development order. This section does not apply to any other subsequent final development order which may also be required for project completion, provided the densities and intensities allowed under the initial final development order are not increased and the specific development plan approved under the initial final development order remains substantially unchanged. All subsequent final development orders proposed to be changed under this section shall be subject to review and approval by the City Commission, and any change approved shall not affect the vested status of said development order.

b. Persons granted a final development order vested under the provisions of this ordinance shall be vested to complete their development in accordance with the terms of their development orders as approved in writing or shown on accompanying plans, without having to comply with the consistency and concurrency requirements of the 2010

Comprehensive Plan, provided that the provisions set forth in section IV have been met.

SECTION V. CONFLICT WITH OTHER ORDINANCES AND CODES.

In case of conflict between this ordinance or any part thereof, and the whole part of any other existing or future ordinance or code, the most restrictive in each case shall apply.

SECTION VI. SAVINGS PROVISION.

If any part of this ordinance is held to be unconstitutional, it shall be construed to have the legislative intent to pass this ordinance without such unconstitutional part and the remainder of this ordinance as to exclusion of such part shall be deemed and held to be valid as if such part had not been included herein.

SECTION VII. EFFECTIVE DATE.

This ordinance shall become effective July 16, 1990.

INTRODUCED in the City Commission on the 13th day of June, 1990.

PASSED the City Commission on the 16th day of July, 1990.

STEVE MEISBURG, Mayor

ATTEST:

ROBERT B. INZER
City Treasurer-Clerk

9000043F-7/17/90

> agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.

Reaching a different conclusion of law from that of the referee is within the scope of review of the commission. Microfile, Inc. v. Williams, 425 So.2d 1218 (Fla. 2d DCA 1983).

The commission in this case, basing its decision on the referee's facts, concluded that the referee's conclusion of law was erroneous. The legislature has given the commission that authority. See Microfile, Inc. v. Williams supra.

AFFIRMED.

COBB, J., and HAMMOND, K.C., Associate Judge, concur.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TOM W. ANTHONY, TALLAHASSEE INTERSTATES WEST,

Petitioner,

vs.

CITY OF TALLAHASSEE,

Respondent.

ER FALR 90:207
CASE NO. 90-6317VR

FINAL ORDER

This matter was heard before the undersigned pursuant to Section 120.65(9), Florida Statutes (1999), and the City of Tallahassee Ordinance No. 90-0-0043AA, adopted July 16,

EXHIBIT "C"

1990.

APPEARANCES

For Petitioner: Charles A. Francis, Esquire
Francis & Sweet
1114 North Gadsden Street
Tallahassee, Florida 32303

For Respondent: James R. English, Esquire and John Sytsma, Esquire
Henry, Buchanan, Mick & English
117 South Gadsden Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Interstate-Tallahassee West has demonstrated that development rights in certain real property it owns have vested against the provisions of the 2010 Comprehensive Plan?

PRELIMINARY STATEMENT

An application for Vested Rights Determination dated July 25, 1990, was filed with the Tallahassee-Leon County Planning Department by Petitioner, Interstate-Tallahassee West (Interstate). The Application for Vested Rights Determination was ultimately reviewed by the Staff Committee for the Respondent, City of Tallahassee (City), and was denied. Notice of the denial was provided to Interstate by letter dated August 24, 1990. Interstate, by letter dated August 29, 1990, appealed the denial. On or about October 4, 1990, the City referred the matter to the Division of Administrative Hearings for assignment of a Hearing Officer.

Pursuant to agreement of the parties, a hearing was held on November 9, 1990, to give the parties an opportunity to supplement the record with additional documentary evidence and testimony. At the commencement of the hearing, conducted in accordance with City of Tallahassee Ordinance No. 90-0-0043AA, the transcript of the hearing before the Staff Committee of the City; exhibits filed with the original request for the assignment of a Hearing Officer; and certain documents the parties had agreed could be submitted to supplement the record were accepted into evidence.

Interstate presented the testimony of Thomas W. Anthony and Kent C. Deeb. The City did not offer any testimony or exhibits.

The parties agreed to file proposed final orders by November 29, 1990. Consequently, the parties waived the requirement that a final order be rendered thirty days after the hearing. Rule 22I-6.031, Florida Administrative Code. Both parties did file timely final orders. Rulings on the parties' proposed findings of fact may be found in the Appendix to this Final Order.

By agreement of the parties, the record and exhibits will be referenced in the following form. References to the record of the hearing in this matter conducted by the Staff Committee on August 20, 1990, will be shown as: (R-1, p. ___). Reference to the record of the hearing conducted by the undersigned on November 9, 1990 at the Division of Administrative

Hearings will be shown as (R-2, p. ___). References to exhibits will be by the title of the exhibit.

FINDINGS OF FACT

A. The Purchase of the Property.

1. In the Spring and Summer of 1985, Thomas W. Anthony began an inquiry relative to the purchase and development of 21.5 acres (original tract) located at the intersection of Capital Circle West and I-10. (R-2, pp. 11-15.)

2. On December 11, 1985, a Deposit Receipt and Contract for Sale and Purchase was executed between Rehold, Inc. and C. Gary Skartvedt, Thomas W. Anthony, and Mary J. Price, d/b/a Denver West Joint Venture (Denver Colorado) for the purchase of the original tract. (Deposit Receipt and Contract for Sale and Purchase.)

3. On March 14, 1986, the Interstate-Tallahassee West Partnership Agreement was executed and Interstate purchased the original tract from Rehold, Inc. (Chronological Listing of Events, p. 1.)

4. At the time of the closing on the initial purchase of the original tract, the property was zoned C-2, with the exception of a small portion in the northwest corner of the tract which was zoned A-2. (R-2, pp. 34-35, Preliminary Plat approved on January 18, 1990.)

B. Development Chronology.

5. During 1987 and 1988 the original tract was held to realize growth potential in terms of Interstate's economic investment. (Chronological Listing of Events, p. 2.)

6. In 1989, Interstate began negotiations for the sale of a portion of the original tract to Kent C. Deeb (Deeb). (Chronological Listing of Events, p. 2.)

7. On June 26, 1989, Broward Davis and Associates, Inc. prepared a drawing of easement location and depiction of a 25-year flood line relative to the portion of the original tract which was the subject of the negotiations between Interstate and Deeb. (Chronological Listing of Events, p. 2, R-2 p. 20.)

8. On September 12, 1989, Tilden Lobnitz and Cooper, Inc., (Consulting Engineers) recommended a reconfiguration of the original tract relative to the location or high voltage power lines. (Chronological Listing of Events, p. 2.)

9. On October 11, 1989, final descriptions of the lakes on the original tract were prepared for Interstate by Broward Davis and Associates. (Chronological Listing of Events p. 2.)

10. On November 13, 1989, a sketch depicting a revised legal description of a proposal to subdivide the subject property was prepared for Interstate by Broward Davis and Associates, Inc. (Chronological Listing of Events, p. 2.)

11. On December 7, 1989, an Environmental Assessment of the site was prepared for Interstate by Jim Stidham and Associates. (Chronological Listing of Events, p. 2.)

12. On December 14, 1989, Deeb executed a Purchase and Sale Agreement which contemplated the conditional purchase of 6.98 acres of the original tract from Interstate. Interstate signed the Purchase and Sale Agreement on December 27, 1989. (Purchase and Sale Agreement, p. 8.) Interstate contends the execution of this Purchase and Sale Agreement resulted in it incurring substantial contractual obligations and argues that these obligations (along with other items and

events) are elements in support of "common law vesting" of its development rights. This agreement is the subject of expanded discussion later in this Final Order.

13. The services that Interstate obtained during 1989 (as described in paragraphs 6-11 above) were related to the eventual consummation of the Purchase and Sale Agreement with Deeb. (R-2, pp. 20-21 and 27, Chronological listing of Events, p. 2.)

14. On January 18, 1990, the Tallahassee-Leon County Planning Commission approved Interstate's Preliminary Plat of the subject property. (Chronological Listing of Events, p. 3.)

15. On April 4, 1990, the Tallahassee City Commission approved Interstate's previously filed application to rezone a portion of the subject property from A-2 to C-2. (Chronological Listing of Events, p. 3.)

16. Interstate entered into a written Utility Agreement with the City on or about July 10,1990. (Letter of agreement dated June 25, 1990 from Henry L. Holshouser, Director of Growth Management, to Interstate Tallahassee West.) The Utility Agreement is the subject of expanded discussion later in this Final Order.

17. On August 20, 1990 a Vested Rights Application covering 6.98 acres of the original tract, which is the subject of the Purchase and Sale Agreement between Interstate and Deeb, was approved. (Letter dated August 21,1990 to Kent C. Deeb from Mark L. Gumula, Director of Planning, Tallahassee-Leon Planning Commission, containing CERTIFICATION OF VESTED STATUS.) The Vested Rights Application for the approximately 15.6 acres remaining of the original tract was disapproved by the Staff Committee and that portion of the property is the subject of this appeal. (R-1, p. 17.)

18. Interstate has not prepared a specific building or development design for the property which is the subject of this appeal. (R-2, p. 97, R-1, p. 5.)

19. As of the date of the hearing in this case, Interstate had no specific building plans for the property which is the subject of this appeal. (R-2, p. 38.)

20. As of the date of the hearing in this case, Interstate had not chosen a specific land use for the property. (R-2, pp. 38-39.)

21. As of the date of the hearing in this case, Interstate had not made application for environmental permits for the property. (R-2, pp. 49 and 98.)

22. As of the date of the hearing in this case, the only infrastructure that had been constructed on the original tract are two storm water ponds which were built in the 1970's, and prior to Interstate's purchase of the property. (R-2, pp. 86, 87.)

23. Interstate was never assured by the City that the property could be used for any specific use such as a motel, apartments or offices. Interstate and the City made no commitments as to any specific uses of the property. (R-2, pp. 47-48.)

24. The City advised Interstate by letter dated August 13, 1990, that the 2010 Comprehensive Plan requires Planned Unit Development zoning for an office park (which is by definition an office building or buildings of more than 40,000 square feet). (Letter from Martin P. Black, City's Chief of Land Use Administration, to Interstate Tallahassee West, dated August 13, 1990.) The City did not advise Interstate that it could not build such an office building on its property. (R-2, pp. 45, 46, and 100.)

25. As of the date of the hearing in this case, Interstate had not requested a determination from the City as to whether the 2010 Comprehensive Plan would prohibit development of the property as the market might dictate. (R-2, p. 40.)

26. At the hearing in this case, Interstate presented the testimony of Mr. Deeb regarding the existence of a master environmental permit for the original tract which was in place before Interstate purchased the property. (R-2, p. 67.) However, Interstate offered no evidence that such permit contemplated any specific use or density regarding development of the property.

C. Costs Associated with Interstate's Property.

27. Interstate purchased the original tract in 1986 at a cost of $748,000. (R-2, p. 17; Development Expenditures.) The cost to purchase the property was not incurred in reliance on any representation of the City.

28. Interstate has expended $325,063.82 in interest on acquisition loans, pursuant to the property purchase. (Development Expenditures.) The interest cost on acquisition loans was not incurred in reliance on any representation of the City.

29. Interstate has expended $46,824.95 in Ad Valorem taxes on the property. (Development Expenditures) These costs were not incurred based on any representation of the City.

30. Interstate has expended $28,839.75 on engineering and survey work on the property. (Development Expenditures) The costs of the engineering and survey work during 1989 were substantially incurred by Interstate in conjunction with the negotiations of the potential sale of the 6.98 acre parcel of its property to Deeb. (Chronological Listing or Events, pp. 2-3; R2, p. 27.) These costs were not incurred based upon any representation of the City.

31. Interstate has expended $8,500.00 in legal and miscellaneous fees associated with development of the original tract and the potential sale of the 6.98 acres to Deeb. (Chronological Listing, Development Expenditures) Interstate has failed to prove that these costs were incurred based on any representation of the City.

D. The Purchase and Sale Agreement with Deeb.

32. Negotiations between Interstate and Deeb regarding The Purchase and Sale Agreement began in the Spring of 1989. (R2, p. 20.) Deeb executed the agreement on December 14, 1989, and the Interstate partners signed the agreement on December 27, 1989. (Purchase and Sale Agreement, p. 8.) Interstate does not assert that the City was privy to this agreement and has failed to prove that it relied on any representation of the City in entering into this agreement or in incurring any costs or future obligations pursuant to the agreement.

33. Interstate was aware that the 2010 Comprehensive Plan was being developed when the Tallahassee-Leon Planning Commission approved Interstate's Preliminary Plat on January 18, 1990. (R-2, p. 50.)

34. Interstate knew that the Comprehensive Plan "was coming" at the time Mr. Anthony (partner in Interstate) understood that the original tract was to be subdivided in order to "cut out" a site for Deeb so as to "key on him" as to the development of the property. (R-2, p. 46.)

35. The Preliminary Subdivision Plat drawing, subsequently presented to the Tallahassee-Leon Planning Commission, is dated November 29, 1990. (Preliminary Subdivision Plat as approved on January 18, 1990.)

36. The testimony of Thomas W. Anthony that Interstate would not have entered into the Purchase and Sale Agreement with Deeb if it knew that it would not be able to move

forward with C2 development of the remaining lots is accepted. (R-2, p. 36.) However, Interstate has failed to prove that it relied on any representation of the City that it could so proceed upon adoption of the 2010 Comprehensive Plan.

E. The Utility Agreement.

37. The Utility Agreement (previously described in paragraph 16) was executed by the City on June 25, 1990. The agreement was signed by on behalf of Interstate on June 29, 1990, by C.W. Harbin and Tommy Faircloth, and on July 10, 1990, by Mr. Anthony. This agreement outlines what Interstate and the City have each agreed to do in terms of Interstate's proposed development. The agreement describes Interstate's proposed development activity in general terms as "commercial development". In this agreement, the City makes no representation or commitments relative to any specific land use or specific density concerning Interstate's property. Interstate has failed to prove that the City, in executing the Utility Agreement, made any representation upon which Interstate relied in incurring any costs or future obligations.

F. The Preliminary Plat Approval.

38. The Preliminary Plat Approval of January 18, 1990, does not contemplate any specific uses, intensities or designations. (R-2, pp. 47-48.) Interstate has failed to prove that the approval of the Preliminary Plat constitutes an act or representation upon which Interstate relied in incurring any costs or future obligations.

G. The A-2 Rezoning Approval.

39. Interstate has failed to prove that it relied upon the act of the City, in approving Interstate's request to rezone a portion of the original tract from A-2 to C-2 in incurring any costs or future obligations.

H. Interstate's Application for Vested Rights.

40. On or about July 25, 1990, Interstate filed an application for vested rights determination (Application), with the Tallahassee-Leon County Planning Department. (Application VR0008T.)

41. The following information concerning the development of the subject property is contained on the Application:

a. "Kent C. Deeb" is listed as the "owner/agent".
b. Question 3 lists the name of the project as "Interstates Tallahassee West."
c. The project is described as a "Four Lot Subdivision."
d. The project location is described as "lots 1 and 2 Block A Commonwealth Center."
e. The total project costs are estimated at $2.5 million."
f. Progress towards completion of the project is listed as: A. Planning: "plans; Rezoning; Subdivision Plat Approval; Utility Agreement for

Extension with the City"; B. Permitting: "Existing with the original Commonwealth Center Development; C. Site Preparation: "Zoning, Platting, and Plans"; D. Construction: "Original Holding Ponds".

g. Total expenditures to date attributed to the progress towards completion of the project are listed as $1.325 million.

h. The form of government approval allowing the project to proceed is listed as "Original Plat; Rezoning; Subdivision Plat."

42. On August 20, 1990, a hearing was held to consider the application before the City's three member Staff Committee. Kent C. Deeb appeared and testified for Interstate.

43. By letter dated August 21, 1990, Mark Gumula, Director of Planning for the Tallahassee-Leon Planning Department, informed Interstate that the Application had been denied.

44. During the hearing before the undersigned, Interstate stipulated that it sought approval of its Application based upon "common law vesting" and not upon "statutory vesting," as those terms are defined in City of Tallahassee Ordinance 90-0-0043AA.

CONCLUSIONS OF LAW

A. Jurisdiction.

The Division of Administrative Hearings has jurisdiction of the parties to and the subject matter of this proceeding. Section 163.3167, Florida Statutes, (1989), and City of Tallahassee Ordinance No. 90-0-0043AA (Ordinance).

B. The Ordinance.

Pursuant to Section 163.3167, Florida Statutes, the City was required to prepare a comprehensive plan governing the use and development of land located within the City of Tallahassee. In compliance with Section 163.3167, Florida Statutes, the City adopted a comprehensive plan (2010 Comprehensive Plan), which was submitted to the Florida Department of Community Affairs for review on February 1, 1990.

The City adopted the Ordinance to insure that existing rights to develop property of Tallahassee property owners created by the Constitutions of the State of Florida and the United States, are not infringed upon by application of the 2010 Comprehensive Plan. The purpose of the Ordinance is to establish the:

> ... sole administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the 2010 Comprehensive Plan.

(Section IA of the Ordinance.)

Pursuant to the Ordinance, any Tallahassee property owner who believes that his or her property rights to develop are vested, and therefore believes that the property may be

developed without complying with the 2010 Comprehensive Plan, must file an application provided by the City within 120 days after July 16, 1990. If an application is filed pursuant to the Ordinance and it is determined that development rights have vested, the consistency and concurrency requirements of the 2010 Comprehensive Plan do not apply to the property.

Applications to determine if development rights have vested are initially reviewed for technical correctness by the Tallahassee-Leon County Planning Department's (Planning Department) staff. (Section III.3.a. of the Ordinance.) Once the Application is accepted, the staff of the Planning Department makes the initial determination as to whether development rights are vested. Id. If staff cannot determine whether an applicant's development rights in the property are clearly and unequivocally vested, a hearing before a Staff Committee consisting of the City Attorney, the Director of Planning, and the Director of Growth Management is to be conducted within fifteen days after the Planning Department staff's decision. (Section III.3.c. of the Ordinance.) A hearing before the Staff Committee may also be requested by an applicant if staff determines that the applicant's property is not vested. Id.

An applicant is required to present all evidence in support of his or her application at the hearing before the Staff Committee. (Section III.3.d of the Ordinance.) At the conclusion of the hearing the Staff Committee must "adopt a decision of approval, denial, approval with conditions, or to continue the proceedings to a date certain." Id. Written notice of the Staff Committee's decision is to be provided within ten calendar days after the hearing. Id.

If a hearing before the Staff Committee is waived or if the decision of the Staff Committee is adverse to the applicant, Section III.3.e of the Ordinance provides for an appeal to a Hearing Officer. The nature of such an appeal is set out in Section III.3.e.1 of the Ordinance:

> This "appeal" is not intended to mean an appeal in the traditional sense, that is, only a review of the Staff Committee record of their hearing. The Hearing Officer "appeal" shall be construed in its broadest, non-technical sense, which is merely an application to a higher authority for a review of the staff Committee action taken.

In reviewing the action taken by the Staff Committee, Section III.3.e.3 of the Ordinance provides the following:

> If the Staff Committee record of the hearing is full and complete, the Hearing Officer may determine that the record is the only evidence that is necessary. However, the Hearing Officer may determine that additional evidence and oral or written testimony, including cross-examination, is necessary to properly evaluate the Staff Committee's action and render a decision as to its validity. The Hearing Officer shall have the authority to determine

the need for additional evidence and/or testimony.

Section III.3.e.5 and 6 of the Ordinance governs the manner in which an appeal is filed and the manner in which any hearing conducted by a Hearing Officer is to be conducted.

Section III.3.e.7 of the Ordinance governs a Hearing Officer's decision:

> a. The Hearing Officer shall review the record and testimony presented at the hearing before the Staff Committee, if any, and at the Hearing Officer's hearing....
>
> b. The Hearing Officer shall be guided by the previously adopted Comprehensive Plan, the adopted 2010 Comprehensive Plan, the Land Development Regulations, this ordinance, and established case law.
>
> c. The burden shall be upon the appellant to show that the decision of the staff or Staff Committee cannot be sustained by a preponderance of the evidence or the staff or Staff Committee decision departs from the essential requirements of law.
>
> d. The Hearing Officer's determination shall include appropriate findings of fact, conclusions of law, and decisions in the matter of the appeal. The Hearing Officer may affirm, affirm with conditions, or reverse the decision of the staff or the Staff Committee.
>
> e. The Hearing Officer shall file his written determination on each appeal with the Director within thirty (30) calendar days of the date of appeal hearing and a copy shall be provided to the City Clerk and the applicant.

Section IV of the ordinance governs the determination of whether an applicant's development rights have vested. Section IV.A of the ordinance provides two situations where development rights will be considered vested: "common law vesting" and "statutory vesting".

In this appeal it is stipulated that the development does not meet the definition of statutory vesting and Interstate argued that its development rights have vested pursuant to the common law vesting definition of the Ordinance. (R-2, p. 8.) "Common law vesting" is defined as:

> A right to develop or to continue the development of property notwithstanding the 2010 Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner, acting in good faith upon some act or omission of the City, has made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property.

(Section IV.1.a of the Ordinance.)

C. Interstate's Application.

Common law vesting under the ordinance contains essentially the same elements of proof as those required to establish equitable estoppel pursuant to case law. Florida courts have described the doctrine of equitable estoppel as follows:

> The doctrine of equitable estoppel will limit a local government in the exercise of its zoning power when a property owner (1) relying in good faith (2) upon some act or commission of the government (3) has made substantial change in position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired.

Smith v. Clearwater, 383 So.2d 681, 686 (Fla. 2d DCA 1980). See also, Key West v. R.L.J.S. Corporation, 537 So.2d 641 (Fla. 3d DCA (19890 ; and Harbor Course Club, Inc. v. Department of Community Affairs, 510 So.2d 915 (Fla. 3d DCA 1987).

Interstate contends that it has meet its burden of proof in establishing "common law vesting" by a preponderance of the evidence. Interstate argues that there have been governmental actions upon which it justifiably relied. Interstate contends that these actions include:

1. C-2 zoning at the time of the purchase of the property.
2. Approval of the Preliminary Subdivision Plat on January 18, 1990.
3. Rezoning of the A-2 parcel on April 4, 1990.
4. Issuance of the Utility Agreement.

Interstate argues that, in reliance upon the C-2 zoning classification, it expended $748,000 for the purchase of the property in 1986. Interstate concedes that it cannot prevail by

reliance on zoning alone. Section IV.1.d. of the Ordinance provides that "A zoning classification or a rezoning does not guarantee or vest any specific development rights." This provision of the Ordinance is consistent with case law. See Miami Beach v. 8701 Collins Ave., Inc., 77 So.2d 428 (Fla. 1955); Pompano Beach v. Yardarm Restaurant, Inc., 509 So.2d 1295 (Fla. 4th DCA 1987); Lauderdale Lakes v. Corn, 427 So.2d 239 (Fla. 4th DCA 1983); and Gainesville v. Cone, 365 So.2d 737 (Fla. 1st DCA 1978).

Essentially, Interstate argues that it is the combination of original C-2 zoning, actions of the City in approving the A-2 to C-2 zoning request on a portion of the original plat, approval of the Preliminary Plat, and entering into the Utility Agreement combined with Interstate's substantial reliance and/or change in position which establishes its right to "common law vesting."

Interstate argues that it has incurred substantial costs in engineering/surveying fees as well as legal and miscellaneous expense in connection with the development of the property. Interstate's exhibits as well as testimony at the hearing in this case indicate that most such expenses were incurred in 1989 and in conjunction with negotiations for the potential sale of a portion of the original plat to Mr. Deeb. Interstate's obligations for these expenses occurred prior to approval of the Preliminary Plat (January 18. 1990), the rezoning of the A-2 parcel (April 4, 1990), and the issuance of the utility agreement (June 25, 1990). Interstate has failed to prove that it incurred these costs in reliance upon any representation, act or omission of the City.

Interstate also contends that it relied in good faith on the acts of the City in incurring substantial contractual obligations in connection with the development of its property. Interstate had constructive and actual notice of the City's preparation of the 2010 Comprehensive plan at the time the Preliminary Plat was being prepared. Interstate has failed to prove that the City was privy to the Purchase and Sale Agreement prior to the date Interstate signed the contract in December 1989. The Utility Agreement contains no representations or commitments by the City as to any specific use of Interstate's property and contemplates only a general "commercial development". Interstate knew that the 2010 Comprehensive plan was being developed months before the Utility Agreement was issued by the City. Interstate has failed to prove that it incurred contractual obligations based upon its "good faith" reliance on any representation, act or omission of the City.

Interstate argues that in this case that zoning, when considered in connection with other government actions and/or substantial reliance by the owner in changing his position to his detriment, is enough to establish equitable estoppel. Interstate acknowledges that equitable estoppel is identical to "common law vesting" under the Ordinance. In support of its argument, Interstate relies upon Hollywood Beach Hotel Company v. City of Hollywood, 329 So.2d 10 (Fla. 1976), Town of Largo v. Imperial Homes Corporation, 309 So.2d 571 (Fla. 2d DCA 1975) and, Board of County Commissioners of Metropolitan Dade County v. Lutz, 314 So.2d 815 (Fla. 3d DCA 1975).

In Hollywood Beach Hotel Company, supra, the Florida Supreme Court outlined a pattern of conduct by the City that involved, among other actions held detrimental to the developer; issuance and continuation of a building permit, approval of zoning changes, subsequent reevaluations of the zoning, and denial of previously approved zoning changes without notice. 329 So.2d 12-13. In applying the doctrine or equitable estoppel against the City, the Court found that the City had engaged in a course of "inaction" followed by subsequent arbitrary conduct that the court equated with "unfair dealing". Id., 18. The Court recognized unique facts which dominated the Hollywood Beach Hotel case. Id., 16. Interstate has not alleged or proved any similar facts

in this case.

In the Town of Largo v. Imperial Homes Corporation, supra, the Town unanimously approved the developer's request for rezoning prior to the developers ownership of a piece of property and, in reliance on that action, the developer went through with the purchase. Based upon assurances of town officials that rezoning for a specific type of development would be permissible on an adjoining tract, the developer made a second purchase. When several residents raised an objection to the project, the Town subsequently down zoned the developer's property, 309 So.2d 572-574. The Second District Court of Appeal, after applying equitable estoppel against the Town, made the following observation:

> Lest our decision be misconstrued, we recognize an increasing awareness on the part of local governments of the growth problems which vitally affect many of the communities in Florida. Therefore, nothing in this opinion should be construed as any impediment to the efforts of municipalities and other local governmental entities which exercise zoning authority from reducing the density provisions in an orderly and comprehensive manner, provided this is accomplished in the interest of public health, safety and welfare and in a way as not to mislead innocent parties who in good faith rely to their detriment upon the acts of their governing bodies.

Id., 574.

Interstate has failed to prove that the City has acted in any manner inconsistent with its police power or that Interstate acted in good faith reliance on any act of the City. Therefore, Town of Largo v. Imperial Homes Corporation is not applicable to the facts in this case.

In Board of County Commissioners v. Lutz, supra, the Third District Court of Appeal found that the county had changed the zoning on the property in question after "Petitioners had incurred extensive financial obligations and expenses in reliance on rezoning of their property which zoning was granted had negotiated, planned and fulfilled county requirements in activities lasting over one year." 414 So.2d 816. This decision involves no reneging by the City after a previously approved zoning change. Instead the City, after giving notice, adopted a comprehensive plan, an action mandated by the state legislature.

Finally, Interstate contends that the action of the Staff Committee, in approving the application submitted by Deeb for the vesting of the 6.98 acre portion or its original tract, is a further imposition of future financial obligations on the partnership. The City argues that the Deeb application for vesting demonstrated that Mr. Deeb had continuously moved forward with a building project and had incurred substantial obligations by entering into contracts for a specific building with a specific tenant. Interstate has not challenged the reasoning of the Staff Committee in approving the Deeb application and that reasoning is not at issue in this case.

Interstate, in making the decision to execute the Purchase and Sale Agreement with Mr. Deeb, may well have limited its options in making decisions on the future of its development. While the decision to execute the Purchase and Sale agreement may result in harsh consequences for the developer in this case, Interstate has failed to prove such consequences are occasioned by any representation, act, or omission of the City upon which it justifiably relied in good faith. See Gross v. City of Riviera Beach, 367 So.2d 648 (Fla. 4th DCA 1979).

The decision of the Staff Committee, in disapproving Interstate's application to vest its development rights against the 2010 Comprehensive Plan will very likely result in a requirement of a more extensive development approval process. Under the 2010 Comprehensive Plan, Interstate will face added restrictions on development as well as added expense in attempting to develop the remaining 15.6 acres of the property to Interstate's view of the "highest and best use." However, Interstate has simply failed to show that the decision of the Staff Committee in this case cannot be sustained by the preponderance of the evidence or that the decision departs from the essential requirements of law.

ORDER

Based upon the Finding of Fact and Conclusions of Law, it is ORDERED that the denial of Petitioner's Application by the Staff Committee is AFFIRMED.

DONE AND ENTERED this 10th day or December, 1990, in Tallahassee, Florida.

JAMES W. YORK
Assistant Director
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
904/488-9675

FILED with the Clerk of the
Division of Administrative Hearings
this 10th day of December, 1990.

POLICY/OBJECTIVES

OBJECTIVE I.5 The County shall establish administrative procedures and standards by which a property owner may demonstrate that private property rights have vested against the provisions of the Comprehensive Plan. These administrative procedures shall provide determinations for the consistency of development with the densities and intensities set forth in the Comprehensive Plan and that development is not subject to the concurrency requirements of the Comprehensive Plan.

POLICY I.5.1 Applications for vesting determinations shall be evaluated pursuant to the following criteria:

(a) Common Law Vesting: A right to develop or to continue the development of property notwithstanding the Comprehensive Plan may be found to exist whenever the applicant proves by a preponderance of evidence that the owner or developer, acting in good faith and reasonable reliance upon some act or omission of the County, has made such a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the right to develop or to continue the development of the property.

(b) Statutory Vesting: The right to develop or to continue the development of property shall be found to exist if a valid and unexpired final development order was issued by the County prior to July 23, 1991, substantial development has occurred on a significant portion of the development authorized in the final development order, and is completed or development is continuing in good faith as of July 23, 1991. A "final development order" shall be any development order which approved the development of land for a particular use or uses at a specified density of use and which allowed development activity to commence on the land for which the development order was issued. "Substantial development" shall mean that all required permits necessary to commence and continue the development have been obtained;

permitted clearing and grading has commenced on any significant portion of the development; and the actual construction of water and sewer lines, or streets, or the stormwater management system, on that portion of the development is complete or is progressing in a manner that significantly moves the entire development toward completion.

POLICY I.5.2 The following categories shall be presumptively vested for the purposes of consistency and concurrency and shall not be required to file an application to preserve their vested rights status: (1) all active and valid building permits issued prior to July 23, 1991; (2) any structure on which constructio has been completed pursuant to a valid building permit.

POLICY I.5.3 The following categories shall be presumptively vested for the purpose of consistency and shall not be required to file an application to preserve their vested rights in this regard: (1) all lots of record as of July 23, 1991, whether located within a subdivision or without, but only to the extent of one single family residence per lot; however, such lots shall not be contiguous as of July 23, 1991 to any other lot(s) owned by or under contract for deed to the person(s) applying for the single family residence building permit; (2) all contiguous lots of record as of July 23, 1991, whether located within a subdivision or without, where such lots are treated as one lot for one single family residence.

Did Equitable Estoppel Survive the Growth Management Act?

May a landowner invoke equitable estoppel in the aftermath of the Growth Management Act?

by J. Dudley Goodlette and Kevin G. Coleman

[T]he theory of estoppel amounts to nothing more than an application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon.[1]

As we all know, a property owner who has relied to his detriment by changing his position in good faith on some act or omission of government may successfully invoke the doctrine of equitable estoppel.[2] If the property owner is successful in arguing equitable estoppel, he may begin or continue development even though the project or a phase of it may not otherwise be permissible.[3]

However, in 1985, the Florida Legislature enacted the Local Government Comprehensive Planning and Land Development Regulation Act (Growth Management Act).[4] The act has been described as the linchpin of "a fully integrated state, regional, and local comprehensive planning process."[5] One of the purposes of the Growth Management Act is to strengthen the powers of local governments in establishing and implementing planning programs to guide and control future development.[6] The Florida Legislature, however, recognized the importance of protecting private property rights by including in the act a limitation against takings[7] and providing for vested rights.[8] The vested rights provision reads as follows:

> Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to chapter 380 or who has been issued a final local development order and development has commenced and is continuing in good faith.[9]

By adding the vested rights provision, the Florida Legislature attempted to set forth specific guidelines for determining when a development that is inconsistent with a local government's comprehensive plan is nevertheless permissible. However, the vested rights provision does not specifically or necessarily preclude the doctrine of equitable estoppel under the Growth Management Act. This article addresses the issue of whether a landowner may successfully invoke the doctrine of equitable estoppel in the aftermath of the Growth Management Act.

Other than authorized developments of regional impact, a project is not vested until the developer obtains a final local development order and commences and continues development in good faith.[10] Unfortunately, the term "final local development order" is not defined under the Growth Management Act. Recent declaratory statements issued by the Department of Community Affairs indicate that local governments are responsible for determining when a "final local development order" has been issued.[11] The Department of Community Affairs has recently stated, however, that the term "final local development order" must be "some governmental action which authorizes commencement of an activity which falls within the definition of development in Section 380.04, Florida Statutes."[12] Local governments are apparently empowered to restrict a developer's ability to obtain vested rights by narrowly defining the term "final local development order." If local governments fail to define "final local development order" in their land development regulations, a court may look to the Growth Management Act for guidance. Although the act does not define "final local development order," the term "development order" is defined as "any order granting, denying, or granting with conditions an application for a development permit."[13] In turn, a "development permit" is defined to include "any other official action of local government having the effect of permitting the development of land."[14] A landowner could make a palatable argument that these definitions do not preclude, and in fact are consistent with, the doctrine of equitable estoppel.

Simply stated, equitable estoppel creates development rights when a landowner relies to his detriment upon some official action of local government.[15] This characterization is arguably encompassed within the definition of "development permit" found in F.S. §163.3164(7). Therefore, if a local government fails to define the term "final local development order," a court may conclude that a developer who has relied to his detriment upon an official action of local government has received a final local development order for purposes of the vested rights provision of the Growth Management Act.

Even if a local government restrictively defines the term "final local development order," the common law doctrine of equitable estoppel is not necessarily precluded.

EXHIBIT "E"

While Florida case law indicates that equitable estoppel will not apply to "transactions that are forbidden by statute or that are contrary to public policy,"[16] a landowner could persuasively assert that the Growth Management Act does not clearly establish a public policy to preclude the application of equitable estoppel. In fact, the introductory clause of §163.3167(8) provides "[n]othing in this Act shall limit or modify the rights of any person...." Such language expresses a broad policy to protect property rights. If the legislature had intended to preclude all development which was inconsistent with a local government's comprehensive plan except as provided in §163.3167(8), it would have stated: "No development which is inconsistent with the appropriate local government's comprehensive plan may be completed or commenced unless the development has been authorized as a development of regional impact pursuant to Chapter 380 or has been issued a final local development order and development has commenced and is continuing in good faith."

In fact, the Florida Legislature likely did not intend to eliminate equitable estoppel under the Growth Management Act. While the legislature possesses great discretion in determining public policy,[17] a presumption exists that the legislature does not intend to alter existing law without expressing a clear intent to do so.[18] Because the doctrine of equitable estoppel is firmly rooted in Florida common law,[19] it should remain as a means for protecting property rights until the legislature clearly precludes its application.

Local governments may be unsuccessful to the extent they argue that the Growth Management Act necessarily eliminates equitable estoppel by clearly stating an intent to preclude developments that are inconsistent with local comprehensive plans. As one writer has described the doctrine of equitable estoppel:

> It is a rule of last resort, but when it is aroused into activity, it stays the operation of other rules which have not run their course, when to allow them to proceed further would be a greater wrong than to enjoin them permanently. It may, in proper cases, operate to cut off the right or privilege conferred by statute or even by the Constitution.[20]

Although not in a land use context, the Florida Supreme Court recently addressed the issue of whether equitable estoppel is available when a statute seemingly precludes its application.[21] The court concluded that the plaintiff was entitled to invoke the doctrine of equitable estoppel despite the fact that the defendants had complied with the literal terms of a statute. The court explained:

> Further, absent specific statutory provision, there is no rule of law which in general exempts statutory rights and defenses from the operation of the doctrine of equitable estoppel. Significantly, the statute neither expressly disallows application of the doctrine nor contains language suggesting such a result.[22]

Although the Growth Management Act apparently permits local governments to narrowly define the term "final local development order," thereby limiting the availability of vested rights, the act does not specifically preclude the doctrine of equitable estoppel. Nor does the act contain language suggesting that equitable estoppel is no longer available. Other courts have been reluctant to hold that a statute has precluded application of the doctrine of equitable estoppel even though the statute would apparently call for such a result.[23] In *Hittel v. Rosenhagen*, 492

So.2d 1086 (Fla. 4th DCA 1986), the Fourth District Court of Appeal construed a statute governing tax liens and held that it did not preclude a taxpayer from arguing equitable estoppel. In part, the statute read: "No act of omission or commission on the part of any property appraiser, tax collector, ... shall operate to defeat the payment of the taxes...."[24]

The local government argued this provision precluded the landowner from asserting the doctrine of equitable estoppel. The court disagreed and held "the statute does not absolve the county and its officers from conduct that might create an equitable estoppel argument against it."[25]

In *Rosenhagen*, the statutory tax provision was seemingly the legislature's attempt to preclude a landowner from prevailing under the theory of estoppel. Conversely, the vested rights and other provisions of the Growth Management Act are even less clear in establishing a legislative intent to preclude equitable estoppel. As a result, courts will likely permit developers to argue estoppel even if they are unable to satisfy the strict criteria set forth in the vested rights provision of the act.

An argument that equitable estoppel is necessarily precluded under the concurrency provisions of the Growth Management Act must also fail. Under the Growth Management Act, a local government's comprehensive plan must contain a capital improvement element to consider the adequacy of public facilities.[26] Public facilities needed to support development must be available concurrent with impacts of such development. Under the concurrency doctrine, development is precluded if the local government has insufficient public facilities and services required to support the proposed development.[27] Any aggrieved or adversely affected party has standing to challenge the issuance of development orders for any development the approval of which would be inconsistent with the local government's plan.[28]

Local governments may argue that equitable estoppel cannot be invoked by a landowner to the extent it would allow developments which violate concurrency. However, courts have rejected a local government's argument that estoppel cannot be applied when it would operate to bring about an otherwise unlawful result.[29] Thus, a development could be allowed to proceed even though it would be in violation of concurrency. Also, equitable estoppel is a suit in equity,[30] and as such, a court has great discretion in fashioning a fair remedy.[31] Accordingly, a local government may be unsuccessful in arguing that the concurrency requirement operates to deprive the landowner of a remedy even though the landowner has proven the elements of equitable estoppel. In fact, to the extent the development is precluded under the local government's comprehensive plan due to concurrency, a court could nevertheless compel a local government to pay money damages to the developer if the landowner has established a basis for relief under equitable estoppel. In essence, concurrency is preserved while the developer is fully compensated.

The Growth Management Act was enacted to ensure orderly and controlled development. To the extent that a developer fails to meet the statutory vested rights criteria as defined through a local government's land development regulations, the landowner could argue that the local government is equitably estopped from enforcing its comprehensive plan and land development regulations. In fact, a local government which has caused a property owner to rely to its detriment upon some governmental act or omission may discover that the Growth Management Act and its vested rights provision will not halt the otherwise inconsistent development.□

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This column is submitted on behalf of the Environmental and Land Use Law Section, Terry E. Lewis, chairman, and Irene K. Quincey, editor.

[1] Town of Largo v. Imperial Homes Corp., 309 So.2d 571, 573 (Fla. 2d D.C.A. 1975) (restating with approval the trial court's description of equitable estoppel).

[2] Hollywood Beach Hotel Co. v. City of Hollywood, 329 So.2d 10, 15-16 (Fla. 1976).

[3] *See, e.g.*, Texas Co. v. Town of Miami Springs, 44 So.2d 808 (town estopped from enforcing emergency ordinance).

[4] Fla. Laws Ch. 85-55 (*creating* FLA. STAT. §§163.3161-.3243).

[5] Pelham, Hyde & Banks, *Managing Florida's Growth: Toward an Integrated State, Regional, and Local Comprehensive Planning Process*, 13 F.S.U. L. REV. 515, 521 (1985).

[6] FLA. STAT. §163.3161(2) (1987).

[7] *Id.* §163.3194(4)(a).

[8] *Id.* §163.3167(8).

[9] *Id.*

[10] *Id.*

[11] *See, e.g.*, American Newland Assocs. v. State Dep't of Community Affairs, 1989 E.R. F.A.L.R. 122 (DCA final order Sept. 13, 1989 (DCA Case No. 89-DS-5); Gulfstream Dev. Corp. v. Florida Dep't of Community Affairs, 11 F.A.L.R. 1018 (DCA final order Sept. 19, 1988) (DCA Case No. 88-DS-2); General Dev. Corp. v. State Dep't of Community Affairs, 11 F.A.L.R. 1032 (DCA final order Sept. 19, 1988) (DCA Case No. 88-DS-1).

[12] General Dev. Corp. v. State Dep't of Community Affairs, 11 F.A.L.R. at 1040.

[13] FLA. STAT. §163.3164(6) (1987).

[14] *Id.* §163.3164(7).

[15] *See, e.g.*, Hollywood Beach Hotel Co. v. City of Hollywood, 329 So.2d at 15-16; Florida Cos. v. Orange County, 411 So.2d 1008, 1010 (Fla. 5th D.C.A. 1982).

[16] Dade County v. Gayor, 388 So.2d 1292, 1294 (Fla. 3d D.C.A. 1980).

[17] Burnsed v. Seaboard Coastline R.R., 290 So.2d 13 (Fla. 1974).

[18] Littman v. Commercial Bank & Trust Co., 425 So.2d 636 (Fla. 3d D.C.A. 1983).

[19] New York Life Ins. Co. v. Oates, 122 Fla. 540, 166 So.269 (1935); United Contractors, Inc. v. United Constr. Corp., 187 So.2d 695 (Fla. 2d D.C.A. 1966).

[20] 28 AM. JUR. 2d, *Estoppel and Waiver* §34 (1966). *See also* Yorke v. Noble, 466 So.2d 349 (Fla. 4th D.C.A. 1985) (equitable estoppel can extinguish statutory right), *approved*, 490 So.2d 29 (Fla. 1986).

[21] Noble v. Yorke, 490 So.2d 29 (Fla. 1986).

[22] *Id.* at 31.

[23] Hittel v. Rosenhagen, 492 So.2d 1086 (Fla. 4th D.C.A. 1986).

[24] FLA. STAT. §197.0151 (1985) (repealed by Fla. Laws Ch. 85-342, effective Dec. 31, 1985).

[25] *Rosenhagen*, 492 So.2d at 1092.

[26] FLA. STAT. §163.3177(3) (1987).

[27] *Id.* §163.3177(10)(h).

[28] *Id.* §163.3215.

[29] *Rosenhagen*, 492 So.2d at 1086.

[30] Quality Shell Homes & Supply Co. v. Roley, 186 So.2d 837 (Fla. 1st D.C.A. 1966).

[31] Hedges & Lysek, 84 So.2d 28 (Fla. 1955).

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

GENERAL DEVELOPMENT CORPORATION Petitioner, v. STATE DEPARTMENT OF COMMUNITY AFFAIRS, Respondent.	)	CASE NO. 88-DS-1

DECLARATORY STATEMENT

On May 16, 1988, General Development Corporation (GDC) petitioned the Department of Community Affairs (DCA) for a Declaratory Statement pursuant to Section 120.565, Florida Statutes (1987) and Chapter 9-4, Florida Administrative Code, on the following issues:

1. Whether Subsection 163.3167(8) applies to the subject GDC properties indentified in Petitioner's Exhibit B which have valid and final DRI Development Order?

2. Whether the subject GDC properties which have valid and final DRI development orders under Chapter 380, Florida Statutes, would be subject to the level of service requirements established by land development regulations adopted by local government under Paragraph 163.3202(2)(g)?

3. Whether Subsection 163.3167(8) would apply to those GDC properties which have been issued final local development orders and development has commenced and is continuing in good faith?*

4. Whether those GDC properties referred to in Paragraph 3

EXHIBIT "F"

abov would be subject to the level of service requirements est- lished by land development regulations adopted by local gove nment under Paragraph 63.3202(2)(g)?*

5. Whether GDC properties which do obtain (i) a valid and final DRI development order or (ii) final local development orders where development has commenced and is continuing in good faith,* prior to the adoption of the local comprehensive plan under Subsection 163.3184(2), would be exempted under Subsection 163.3167(8) from:

(i) the consistency requirements under Subsections 163.3194(1) and (2) (cite corrected in Petitioner's letter of 7/26/88), and/or

(ii) the concurrency requirements of Paragraph 163.3202(2)(g)?

6. Whether GDC properties which do obtain (i) a valid and final DRI development order or (ii) final development orders where development has commenced and is continuing in good faith,* subsequent to the adoption of the local comprehensive plan under Subsection 163.3184(2) but prior to the adoption of land development regulations referred to in Paragraph 163.3202(2)(g) would be exempted under Subsection 163.3167(8) from:

(i) the concurrency requirements of Paragraph 163.3202(2)(g), and/or

(ii) the interim requirements in the third sentence of Paragraph 163.3194(1)(b)?

7. Whether Subsection 163.3167(8) exempts from the application of Paragraph 163.3202(2)(g) those GDC properties

identified in Paragraph 6 of the Petition which have received a master plan development order under Subsection 380.06(21), Florida Statutes?

8. Whether Subsection 163.3194(1)(a) (cite corrected in Petitioner's letter of 7/26/88) applies to GDC properties that have been authorized as a development of regional impact pursuant to Chapter 380 where such development receives a non-substantial deviation approval under Subsection 380.06(19), Florida Statutes, subsequent to the adoption of the revised comprehensive plan and/or land development regulations?

9. Whether the provisions of Subsection 163.3167(8) apply to those changes to GDC properties requiring further development-of-regional impact review pursuant to Paragraph 380.06(19)(g), Florida Statutes, after the adoption of the revised comprehensive plan and/or local land development regulations?

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* "The above questions are based on the premise that the applicable local government would find and conclude that the GDC properties referred to above in general terms have been issued final local development orders and development has commenced as [sic] is continuing in good faith."

FINDINGS OF ACT

A. The following Findings of Fact were taken from the Petition for Declaratory Statement and DCA, while making no independent investigation as to the truth or accuracy of these facts, accepts them as presented for the purpose of responding to the Petition.

1. The Petitioner is General Development Corporation, a Delaware corporation authorized to do business in the State of Florida (hereinafter "GDC"), whose mailing address is 1111 South Bayshore Drive, Miami, Florida 33131, and whose Florida headquarters are located at the same address.

2. On February 10, 1978, the State of Florida Department of Administration, through the Division of State Planning, and GDC entered into an Agreement, as amended on August 26, 1985, which established requirements for the future review and approval of GDC's projects located throughout the State of Florida as developments of regional impact pursuant to Section 380.06, F.S.

3. Subsequent to the execution of this Agreement, GDC acquired additional properties in the State of Florida at Silver Springs Shores, Marion County, Florida, and at Port La Belle, Glades and Hendry Counties, Florida.

4. GDC has been issued final local development orders and development has commenced and is currently continuing in good faith on various GDC properties, that are not developments of regional impact, located throughout the State of Florida.

5. The Florida Legislature has enacted the "Local

Government Comprehensive Planning and Land Development Regulation Act" in 1985 ("Act"). The Act has been amended in 1986 and 1987. The Act contains two substantive requirements which directly affect GDC's properties as identified in this Petition. These are known as the "consistency" and "concurrency" requirements.

6. The Act requires each local government to adopt a revised comprehensive plan containing certain mandatory elements which are described in the Act and Rule 9J-5, Florida Administrative Code. All development orders issued after the comprehensive plan is adopted must be consistent with the plan. A development order is consistent if the land uses, densities or intensities and other aspects of development thereunder is compatible with and furthers the objectives, policies, land use and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government. [Section 163.3194, F.S. "consistency requirement" herein.]

7. The Act requires each local government to adopt or amend, and enforce land development regulations that are consistent with and implement the adopted comprehensive plan within one year after the comprehensive plan's adoption. These regulations must contain certain detailed provisions for the implementation of the adopted comprehensive plan and for the provision of public facilties and services which meet or exceed the standards established in Section 163.3177 and which are available when needed for the development or that development orders and permits would be conditioned on the availability of

the services and facilities necessary to serve the proposed development. [Section 163.3202, F.S., "concurrency requirements" herein.]

8. The Act also provides in Subsection 163.3167(8) a prohibition against limiting or modifying the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to Chapter 380 or that has been issued a final local development order, on which development has commenced and is continuing in good faith.

B. The following Findings of Fact were made by DCA upon review of its files, records, statutes, and rules.

1. Respondent is the Florida Department of Community Affairs, also known as the State of Florida Land Planning Agency, whose address is 2740 Centerview Drive, Tallahassee, Florida 32399.

2. The development orders issued for the following GDC properties, listed in Petitioner's Exhibit B, contained authorization of a specific amount and plan of development without the necessity of further or additional review and approval by the local government:

DeSoto County-Villages of DeSoto

Port St. Lucie-Midport

Port St. Lucie-Sharrett

Port St. Lucie-Eastgate/Town Centre

Palm Bay-Oakwood Village

Palm Bay-Interchange

Palm Bay-Sandy Pines

St. Johns County-Julington Creek

3. The following DRIs, listed in Petitioner's Exhibit B, were approved as master plan DRIs and have received authorization, through subsequent incremental development orders or settlement agreement, to begin development of the project:

Charlotte County - Murdock Center, Increments I and II

Glades County - Port LaBelle, Increments I, II and III

Hendry County - Port LaBelle, Increments I, II and III

North Port - Myakka Estates, Increment I and Settlement Agreement

CONCLUSIONS OF LAW

The Florida Department of Community Affairs has jurisdiction of the Petition for Declaratory Statement pursuant to Section 120.565, Florida Statutes (1987) and Chapter 9-4, Florida Administrative Code, and responds as follows:

Petitioner's Question 1

Petitioner questions whether Subsection 163.3167(8) applies to its properties which have received a valid and final DRI development order.

As stated in Findings of Fact B2 and 3 above, the properties listed in Petitioner's Exhibit B (attached to the Application for a Declaratory Statement) have valid, final DRI development

orders and are presently in full force and effect. The terms and conditions of the Petitioner's DRI development orders, and the provisions of Section 380.06, Florida Statutes, determine or define what rights Petitioner has to develop the DRIs to completion. The following prohibition, specified in Subsection 163.3167(8), Florida Statutes, is applicable to the DRI development orders listed in Petitioner's Exhibit B.

> Nothing in this act shall limit or modify the rights of any person to complete any development that has been authorized as development of regional impact pursuant to Chapter 380, or who has been issued a final local development order and development has commenced and is continuing in good faith.

It is the Department's position that the intent of Subsection 163.3167(8), F. S., was to "grandfather" or "vest" a developer's rights to complete his project as originally approved by the local government under its existing comprehensive plan and land development regulations. The prohibition against the modification or limitation of these development rights was directed specifically to local governments for consideration when they are establishing the needs of the community, drafting the revised comprehensive plan and implementing that plan through new land development regulations.

The provisions of Subsection 163.3167(8) prevent a local government from mandating requirements for new development regulations that would so change or alter a DRI development order that it would materially or substantially affect the developer's ability to complete the development authorized in the development

order. This prohibition was specifically intended to protect a developer from the risk of planning and receiving approval for his proposed project under one set of regulations and then having to comply with a new set of different regulations before or during construction.

DRI development orders and final local development orders establish specific development rights that must be recognized and respected by both the developer and the local government. Certain development rights that would be specifically protected by Subsection 163.3167(8) would include but not necessarily be limited to the following: authorized land use; density or intensity of development; staging or phasing of development; and other conditions of development or mitigation that are specific to each DRI development order issued.

Petitioner's Question 2

Petitioner requests a determination of whether its DRI developments which have valid and final DRI development orders would be subject to the level of service requirements established by the land development regulations adopted pursuant to paragraph 163.3202(2)(g), F.S. Local governments must establish level of service standards for public facilities and services in their comprehensive plan. (See Section 163.3177, F.S.) They also must adopt land development regulations that implement the revised comprehensive plan and provide that services and facilities will be available when needed to accommodate development within

their jurisdiction. (See Subsection 163.3202(2), F.S.) This statutory requirement is codified in Paragraph 163.3202(2)(g), which states in pertinent part:

> Not later than one year after its due date . . . for submission of local government comprehensive plans . . . , a local government shall not issue a development order or permit which results in a reduction in the level of services for the affected public facilities below the level of services provided in the comprehensive plan of the local government.

Petitioner questions whether this provision will affect its existing DRI development orders. It is the Department's opinion that this potentially broad prohibition of the issuance of development orders would not apply to limit or modify rights to complete a previously authorized DRI. Existing DRI development rights are specifically protected by operation of Subsection 163.3167(8) and may not be limited by local governments through application of Sections 163.3177 or Subsection 163.3202(2). The provisions of Subsection 163.3167(8) prevents a local government from mandating requirements in new development regulations that would so change or alter a DRI development order that it would materially or substantially affect the developer's ability to complete the development authorized in the development order. Further, the local government, in assessing its needs for future facilities or services to maintain a projected level of service standard, should have taken into consideration the development rights and impacts of all authorized DRIs within their jurisdiction. If it has not taken these development rights and

impacts into account in its calculations, a local government is not relieved from its obligation to respect those rights or to issue permits that would give them effect.

Certain DRI development rights that would be specifically protected by Subsection 163.3167(8) would include but not be limited to the following: the authorized land use; density or intensity of development; staging or phasing of development; and other conditions of development or mitigation that are specific to each DRI development order issued. It is the Department's understanding that the legislature did not intend and the law does not allow, (through Subsection 163.3167(8), F.S.), a local government to use the comprehensive planning process as a means of reassessing and divesting development rights existing under previously reviewed and approved DRI development orders.

Petitioner's Question 3

This questions concerns the applicability of Subsection 163.3167(8) to GDC properties, non-DRIs, which have been issued final local development orders on which development has commenced and is continuing in good faith. If a final local development order has been issued on a non-DRI size project and development has commenced and is continuing in good faith, it is the Department's position that the same protection afforded DRI development orders should apply to the final local development order conditions. Subsection 163.3164(5), Florida Statutes (1987), provides that the term "development" has the same meaning given it by Section

380.04 which contains a broad definition of development and gives detailed examples of what is and is not development. A final local development order, for purposes of Subsection 163.3167(8), Florida Statutes, must be some governmental action which authorizes commencement of an activity which falls within the definition of development in Section 380.04, Florida Statutes. That activity must have commenced and must be continuing in good faith. The questions of whether a final local development order has been issued and whether development has commenced and is continuing in good faith must be determined by the local government and not by the Department. If these conditions exist, it is clearly legislative intent, as specified in Subsection 163.3167(8), that neither a revised comprehensive plan nor development regulations adopted pursuant thereto are to limit or modify the developer's right to complete that development.

Petitioner's Question 4

Petitioner asks whether GDC properties (non-DRI) which have previously obtained a final local development order, and on which development has commenced and is continuing in good faith would be subject to the level of service requirements established by the land development regulations adopted pursuant to paragraph 163.3202(2)(g). As stated in the response to Petitioner's Question 3, if the non-DRI size development has received a final local development order following which development has commenced and is proceeding in good faith as determined by the local

government, the general prohibition against issuance of permits under conditions specified in paragraph 163.3202(2)(g), F.S., does not apply to that authorized development.

Petitioner's Question 5

Petitioner questions whether DRI development orders and final local development orders under which development has commenced and is continuing in good faith, if obtained prior to the adoption of the revised local comprehensive plan (Subsection 163.3184(2), F.S.), would be exempted from both the consistency and concurrency requirements of Chapter 163. Because these development orders were adopted prior to the adoption of the revised comprehensive plan, it is the Department's opinion that the same protections discussed in response to Petitioner's Questions 1 through 4 would be applicable. The terms and conditions of the development orders issued would be subject to the terms and conditions of the land development regulations and comprehensive plan in effect at the time the proposed development was reviewed and approved. The development orders adopted would be protected, by virtue of Subsection 163.3167(8), against compliance with the new comprehensive plan provisions.

However, DRI and other development orders may contain an infinite variety of terms and conditions which delineate and define specific development rights created therein. Dependent upon the terms or conditions of these provisions, certain of these rights may not be exempted from compliance with the

pertinent portions of the new comprehensive plan or land development regulations adopted thereunder. For example, when a local government is adopting a DRI development order, it is required to establish a date until which the approved DRI shall not be subject to down-zoning, unit density reduction or intensity reduction, unless the local government can demonstrate, among other things, that the change is essential to the public health, safety or welfare. (See Subsection 380.06(15), F.S.) If such a provision is contained in a DRI development order, once the date specified has been passed, it may be within the local government's authority, subject to constitutional or common law limitations, to down-zone, reduce unit density or intensity without having to prove necessity for the change based on health, safety and welfare considerations.

Further, if the local government adopted a development order which incorporates the concurrency requirements of Subsection (163.3202(2), then the development order would be subject to the concurrency provisions of Subsection 163.3202(2). To reiterate, the terms and provisions of the development orders, either DRI or final local development orders which meet the test set forth in 163.3167(8), would determine the development rights "vested" under the revised comprehensive plan and land development regulations adopted to implement the plan's provisions. Generally, these "vested" development orders would be exempt from both the consistency and concurrency requirements of Chapter 163. As indicated in this response, however, a local government is

fully within its rights a authority to include provisions in the development order it ues which would require the provisions of public facil ·ies and services concurrent with the need generated by the approved development.

Petitioner's Question 6

This question asks whether a DRI or other final local development order on which development has commenced and is continuing in good faith, obtained subsequent to adoption of the local comprehensive plan but prior to the adoption of the land development regulations, would be exempted by Subsection 163.3167(8) from requirements of paragraphs 163.3202(2)(g) or the requirements of the third sentence of paragraph 163.3194(1)(b). It is the Department's position that Subsection 163.3167(8) applies only to DRI or other development orders adopted prior to the adoption of the revised local comprehensive plan. As explained above, this provision acts to recognize the "vested" aspect of development rights which arose from the review and approval of a proposed plan of development under the prior comprehensive plan and land development regulations. Thus, any development orders (DRI or others) issued after the adoption of the revised comprehensive plan must contain provisions that are consistent with provisions of that revised plan, even if the land development regulations have not yet been adopted. Because of this consistency requirement, the development orders issued would be subject to whatever concurrency requirements are detailed in

the revised comprehensive plan. Thus, the vested rights provisions of Subsection 163.3167(8) would not apply to these development orders.

The third sentence of Paragraph 163.3194(1)(b) states:

> During the interim period when the provisions of the most recently adopted comprehensive plan, or elements or portion thereof, and the land development regulations are inconsistent, the provisions of the most recently adopted comprehensive plan, or element or portion thereof, shall govern any action taken in regard to an application for a development order.

That provision, when read together with the remainder of Subsection 163.3194(1), makes it clear that once a plan is adopted, all development orders issued and all actions taken by a local government must be consistent with the adopted plan. Thus, any development orders issued to Petitioner after adoption of the revised comprehensive plan must be consistent with that comprehensive plan, whether or not land development regulations have been adopted, pursuant to Paragraph 163.3194(1)(b). In the circumstances stated, Petitioner's developments would not be exempted from meeting the requirements of these statutory provisions.

Petitioner's Question 7

This questions whether Subsection 163.3167(8) exempts Petitioner's properties which have received a master plan development order under Subsection 380.06(21) from the application of Paragraph 163.3202(2)(g). Large developments

planned for buildout over a long period of time may apply for master plan approval but must submit subsequent increments proposing specific development for full DRI review and approval prior to construction. While a master plan development order may be issued covering the entire proposed development, under the law, if no development is authorized in the master plan development order, the right to commence construction does not accrue until an application for approval for an incremental portion of the development is filed, DRI review of that increment is completed and a DRI development order for it has been issued. Development activity may not commence on a master plan development order unless the master plan development order itself authorizes a specific amount of development or until a subsequent incremental development order authorizing a specific amount of development is issued. Thus, a master plan for a proposed development does not undergo full DRI review until all increments thereto have been reviewed, approved and incremental development orders issued. The master plan development order generally outlines standards and criteria governing the submission and review of incremental applications. Therefore, the provisions of Subsection 163.3167(8) would protect the development rights obtained under the subsequent incremental development orders of a master plan development order which had been issued prior to the adoption of the revised comprehensive plan. Subsection 163.3167(8) would not protect future increments not yet reviewed or approved, except to the extent that the master plan

development order established certain development rights which were applicable to all future increme al development and which did not require additional DRI review.

Petitioner's Question 8

This question asks whether Paragraph 163.3194(1)(a) applies to Petitioner's previously approved DRI properties which, after adoption of a revised comprehensive plan, obtain a development order from local government that approves changes to the DRI which are minor and not substantial deviations requiring further DRI review pursuant to Subsection 380.06(19).

It is assumed, for purposes of responding to this question, that the local government, during the comprehensive planning process, recognized the previously approved DRI and adopted a plan that did not limit or modify rights to develop the DRI, as required by Subsection 163.3167(8). Therefore, the approved DRI is assumed to be consistent with the comprehensive plan, prior to any changes. Proposed changes to the DRI that would be so minor as to constitute non-substantial deviations under Subsection 380.06(19) would probably not be inconsistent with the plan. However, the law is clear that whether proposed changes to a DRI are substantial deviations or not under Section 380.06(19), all development orders and actions taken by local government after plan adoption must be consistent with the plan, pursuant to Paragraphs 163.3194(1)(a) and (b). DRI development orders amending the original order to incorporate changes after plan

adoption would also have to meet that standard. But a local government may not use the fact that minor changes to a DRI are approved in a development order as a pretext for applying the concurrency requirements in Paragraph 163.3202(2)(g) and for ignoring the protection conferred upon the DRI by operation of Subsection 163.3167(8).

Petitioner's Question 9

Petitioner questions whether its DRI properties approved prior to adoption of the revised comprehensive plan retain the protection of development rights afforded by Subsection 163.3167(8) if changes constituting a substantial deviation which require further DRI review pursuant to Subsection 380.06(19) are proposed.

It is clear that a development order approving a substantial deviation under Subsection 380.06(19) must still be consistent with the adopted comprehensive plan, because Section 163.3194(1) requires it. However, other portions of the DRI which are not within the area of the proposed changes should not be affected in the development order approving those changes. Paragraph 380.06(19)(g)4. states:

> Development within the previously approved development of regional impact may continue, as approved, during the development-of-regional-impact review in those portions of the development which are not affected by the proposed change.

Furthermore, the law provides that any new conditions in the amended development order may only address issues raised by the

proposed changes. (Paragraph 380.06(19)(g)3.) Therefore, the protection afforded by Subsection 163.3167(8) would remain intact for all development rights which were not the subject of the changes. Restated, any change (substantial deviation or non-substantial deviation) to a development right within a development order subsequent to the adoption of the revised comprehensive plan removes the protection of Subsection 163.3167(8) for only those development rights being changed. All other portions of the development orders, and development rights received thereunder, shall remain unaffected by the changes and fully protected by Subsection 163.3167(8) against forced compliance with the revised local comprehensive plan.

This Declaratory Statement constitutes final agency action, pursuant to Chapter 120, Florida Statutes. A party who is adversely affected by this Declaratory Statement is entitled to judicial review pursuant to Section 120.68, Florida Statutes. To initiate an appeal, a notice of appeal must be filed with the Department's clerk of agency proceedings, 2740 Centerview Drive, Tallahassee, Florida 32399-2100, and with the appropriate District Court of Appeal within 30 days of the filing of this Final Order with the Department's clerk of agency proceedings. A notice of appeal should be accompanied by the filing fee specified in Section 35.22(3), Florida Statutes.