

**CPA 2008-15  
PRE-DISASTER BUILDBACK  
BoCC INITIATED  
AMENDMENT  
TO THE**

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**LEE COUNTY COMPREHENSIVE PLAN**

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**THE LEE PLAN**

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

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**BoCC Public Hearing Document  
For the  
March 3<sup>rd</sup> 2010 Adoption Hearing**

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**February 17, 2010**

**LEE COUNTY  
DIVISION OF PLANNING  
STAFF REPORT FOR  
COMPREHENSIVE PLAN AMENDMENT  
CPA2008-15**

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

STAFF REPORT PREPARATION DATE: July 17, 2009

**PART I - BACKGROUND AND STAFF RECOMMENDATION**

**A. SUMMARY OF APPLICATION**

**1. APPLICANT:**

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
Represented by Lee County Division of Planning

**2. REQUEST:**

Add a Lee Plan Objective, Policies, and definition to permit pre-disaster buildback of multi-family residential developments at their existing densities.

**B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

**1. STAFF RECOMMENDATION:** Amend Goal 5 of the Future Land Use Element by adding a new Objective and Policy permitting pre-disaster buildback at existing developed densities. The recommended additions are as follows:

**OBJECTIVE 5.2: Redevelopment of Existing Multi-Family Residential Development: To incentivize and promote cost effective and timely redevelopment of multi-family developments that were approved and developed prior to the adoption of the 1984 Lee Plan, in excess of the standard density range for their current Future Land Use Category.**

**POLICY 5.2.1:** Over-density multi-family residential developments that lawfully achieved their density prior to the effective date of the Lee Plan (December 21, 1984), may be permitted to redevelop at their existing density. Over-density multi-family redevelopments will be considered on a case by case basis.

**POLICY 5.2.2:** When rezoning is required, the Planned Development zoning process must be utilized to prevent and mitigate adverse impacts to the surrounding areas and to ensure that appropriate site development regulations are incorporated into the development plans.

**POLICY 5.2.3:** In order to establish the: exiting structures; number of dwelling units; floor area; existing water management systems and outfalls; and, impervious area on the subject property, all proposals for over-density multi-family redevelopment must provide the county with full documentation verifying this information. This information must be provided at a pre-application meeting with County staff.

**POLICY 5.2.4:** All redevelopment must conform to all height limitations in effect through other regulations.

**POLICY 5.2.5:** The site design of the proposed development must be compatible with surrounding land uses to the maximum extent possible.

**POLICY 5.2.6:** All wet retention and dry retention areas must be planted with appropriate native trees and herbaceous plant species.

**POLICY 5.2.7:** For sites located within the Coastal High Hazard Area, proposed redevelopment must:

1. Have sufficient elevation to address a storm surge from a land falling category 5 hurricane;
2. Be constructed to withstand winds of 200 mph in accordance with the Florida Building Code;
3. Utilize impact protection for all exterior openings in accordance with the Florida Building Code;
4. Be equipped with emergency power and potable water supplies to last up to five days;
5. Be protected with adequate ventilation, sanitary facilities, and first aid medical equipment; and,
6. To reduce the impact on wildlife such as sea turtles and migrating birds, projects must be designed to minimize light pollution, sky glow and light trespass beyond the property lines by using appropriate light fixtures and other light management techniques. Techniques may include:
  - a. Utilizing fully shielded, full cut off luminaries; down style canisters with interior baffles on the balconies; pole lights less than 15 feet in height; bollard type fixtures with louvers; and other techniques acceptable to the Division of Environmental Sciences.

- b. Up-lighting is prohibited. Mercury vapor and metal halide lamps are also prohibited.
- c. Glass windows and doors must be treated to achieve an industry-approved, inside-to-outside light transmittance value of 45 percent or less.

Staff recommends adding the following definition of “Build-back” to the Lee Plan Glossary.

**Build-back** - replacing an existing structure or developed site with structures and/or development of substantially similar use, density and/or intensity.

## **2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

- Prior to the adoption of the Lee Plan, multi-family residences at several locations within Lee County were built at densities that exceeded the densities adopted in the Lee Plan.
- Redeveloping these sites under current regulations would require a reduction of the number of units, creating a disincentive to redevelop the sites.
- The proposed new policies would allow the sites to be redeveloped while mitigating negative impacts of the new and/or existing development.
- Redevelopment of these sites will require developers to address issues of stormwater management and site design, which are often lacking in older multi-family developments.

## **C. BACKGROUND INFORMATION**

Several developers have approached Lee County Staff to inquire about redeveloping existing multi-family residential areas. In some cases, such as at Shell Point or on North Key Drive, the multi-family units predate the Lee Plan and have a higher density than is currently permitted for those areas. Since these properties achieved their nonconforming density prior to the adoption of the Lee Plan, they are permitted to retain this density as long as there are no changes to the property. Once a property owner proposes to make changes to the property that would require a rezoning or development order the property must be brought into conformance with current regulations. This would include removing any residential units in excess of the permitted maximum.

The only exception to this requirement is outlined in Chapter XIII of the Lee Plan under the post-disaster buildback regulations. The existing post-disaster buildback regulations Plan recognize the right of a property owner to rebuild their development if it is destroyed by a natural disaster. It does not apply to the voluntary tearing down of a structure.

Lee Plan Goal 105 concerns the Coastal High Hazard area. The objectives and policies in this goal are intended to maintain lower residential density in order to reduce the possible negative impacts of hurricanes and tropical storm surges. Therefore, much of the Coastal High Hazard Area have been designated with lower density future land use categories. Properties built before the adoption of these future land use categories can and do exceed the maximum permitted residential density.

## **PART II - STAFF ANALYSIS**

### **A. STAFF DISCUSSION**

An analysis of multi-family residential developments in Lee County has revealed approximately 38 sites that were built before the adoption of the Lee Plan which exceed the standard density permitted by their designated future land use category. If any of these properties were to apply for redevelopment they would be required to conform to the density regulations of the Lee Plan. The subsequent reduction of residential units creates an economic disincentive for the rehabilitation of these multi-family developments.

The proposed Lee Plan Objective and Policy are intended for multi-family residences only. Single family residential density is addressed through Chapter XIII of the Lee Plan under Minimum Use Determinations. This policy is intended to address all urban and non-urban areas that are subject to the Lee Plan. Each redevelopment application will be reviewed for conformance with the proposed policy on a case by case basis.

Currently, the only way a property that is over the permitted maximum residential density may reconstruct to the existing density is if the property is more than 50% destroyed by natural forces such as hurricanes or fires. Therefore, property owners who wish to redevelop multi-family residential developments that are over density are forced to reduce the number of units to the currently permitted maximum. This creates a strong financial incentive for owners of multifamily units to leave their property as it is, which may result in some cases in the gradual deterioration of these properties.

In order to allow landowners who wish to redevelop nonconforming multi-family residences, the proposed Lee Plan policies require that applicants provide full documentation of their existing development on the subject property prior to commencing any onsite modifications. This documentation must be presented to planning staff at a pre-application meeting. This will provide a baseline from which any significant changes in the proposed redevelopment can be measured.

Some multi-family residences do not conform to the zoning district that they occupy. In such cases, proposed redevelopment would need to rezone to a new category to accommodate the existing residential density. Whenever a rezoning is required, the Planned Development process will be required. This will allow staff and the applicant to address conditions specific to the subject property. This will not be required in cases where existing development is consistent with the current zoning.

### **Site Design**

Multi-family units built before the adoption of the Lee Plan may not sufficiently address site design issues such as open space, storm water management and onsite landscaping. The applicant will be required to design the redeveloped site so that it is as compatible as possible with surrounding uses. Parking lots within a subject multi-family project must be redesigned to include internal landscape islands to provide shading and cooling effects. Any docks within a subject multi-family project must be redesigned to be compliant with the Manatee Protection Plan. All wet retention and dry retention areas must be planted with appropriate native trees and herbaceous plant species. The maximum height of the redeveloped structures will not be permitted to exceed any applicable existing regulations for the subject site.

## **Building Height**

No restrictions are being placed on increases in the floor space of redeveloped multi-family units. However, in order to conform with existing open space and landscaping requirements, the area available for the building footprint may decrease on some sites. This could have the effect of forcing the redevelopment to increase in height even if the floor area of the development remains the same.

## **Coastal High Hazard Area**

This amendment does not increase density in the Coastal High Hazard Area. As proposed, the amendment allows existing units to be replaced with the same number of units, with increased design and building standards. Last years Lee Plan amendment CPA2007-51 addressed the redevelopment of portions of San Carlos Island. County Staff worked with the applicant and the State to create development standards to mitigate hurricane sheltering and evacuation impacts within the Coastal High Hazard Area. The standards that were adopted as part of that Lee Plan amendment are included as part of this proposed amendment for multi-family developments within the Coastal High Hazard Area.

Multi-family residential projects within Coastal High Hazard Area that exceed maximum permitted density for their Future Land Use designation place a potentially greater number of residents in danger during tropical storms and hurricanes. Therefore, a greater site and building design standard is required in order to redevelop these sites. Multi-family residential sites that apply to redevelop with their existing number of units will be required to have sufficient elevation to address a storm surge from a land falling category 5 hurricane. The buildings will be constructed to withstand winds of 200 mph in accordance with the Florida Building Code.

## **Utilities**

Redevelopment of a multi-family residential project may require upgrades to utilities that serve the project, such as water and sewer lines. In accordance with the county's Land Development Code, the developer is responsible for any upgrades to the utility systems.

## **B. CONCLUSIONS**

Permitting multi-family residences that exceed maximum permitted density to retain their excess units will provide an incentive to landowners to redevelop properties that are currently dilapidated or which become dilapidated in the future. The proposed Lee Plan goal and policy will mitigate the impact of the excess residential density.

## **C. STAFF RECOMMENDATION**

1. Original staff recommendation:

Amend Goal 5 of the Future Land Use Element by adding the proposed new objective and policy as shown in Part I B 1.

2. Updated Staff recommendation:

Amend Goal 5 of the Future Land Use Element by adding the proposed new objective and policy as shown in Part V.B.

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

DATE OF LPA PUBLIC HEARING: July 27, 2009

**A. LOCAL PLANNING AGENCY REVIEW**

Planning staff made a brief presentation. One LPA member asked if mobile home parks were covered by the proposed amendment. Staff responded that the amendment covers only multi-family residential buildings. Staff has determined that mobile home parks will be addressed later as a separate issue. Another member asked why the proposed amendment includes height restrictions. Staff stated that the intent of proposed Policy 5.2.4 is to show that properties that are redeveloped under the buildback policy are still subject to the height restrictions of the Land Development Code. Another LPA member expressed concerns that the although proposed Policy 5.2.1 permits redevelopment of over-density units, the conditions and regulations required by the subsequent proposed policies make such redevelopment too difficult to perform. Staff responded that the case by case basis of review helps address the fact that many of the subject properties have unique situations and conditions. Further, the proposed policies create higher standards for the subject properties in the Coastal Hazard Area because their excess density places an increased number of residents at higher risk. One member asked how the proposed policies would handle multi-family redevelopment on properties that did not achieve their excessive density in a lawful manner. Staff replied that in such cases, the applicant would probably not be permitted to keep the excess multi-family units and that the County has forced the removal of excess units in the past. Another member noted that proposed Policy 5.2.3 needs to be clarified and that it should specify that the applicant should submit plans of existing and proposed redevelopment as part of the required documentation. Another member asked what kind of precedent the proposed amendment would create on post-Lee Plan redevelopments. Staff stated that it would not create a precedent since developments created after the adoption of the Lee Plan conform to the permitted densities.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY**

**1. RECOMMENDATION:**

The Local Planning Agency recommends that the board transmit the proposed amendment with a clarification of proposed Policy 5.2.1 and that proposed Policy 5.2.3 be modified to require plans of existing and proposed development prior to redevelopment. Proposed Policy 5.2.4 is being deleted from the proposed amendment and the rest of the policies will be renumbered to account for this. The County Attorneys Office has recommended text changes to address the LPAs concerns as well as some of it's own. Staff has changed the policy language to reflect the concerns of the LPA and the County Attorneys Office. Staff recommends that the board transmit the amended text.

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The LPA believed that proposed Policies 5.2.1 and 5.2.3 needed clarification. The LPA believed that proposed Policy 5.2.1 was contradictory in that it stated that applicants have a right to redevelop but then placed burdens on that redevelopment. The LPA also believed that proposed Policy 5.2.3

needed to more explicitly state the required materials for redevelopment. Policy 5.2.4 was considered to be unnecessary since all redevelopment would already be subject to the height regulations of the Land Development Code. The County Attorneys Office also reworded part 6 of Policy 5.2.7 to be more grammatically correct.

**C. VOTE:**

<b>NOEL ANDRESS</b>	<b>AYE</b>
<b>CINDY BUTLER</b>	<b>AYE</b>
<b>CARIE CALL</b>	<b>AYE</b>
<b>JIM GREEN</b>	<b>AYE</b>
<b>MITCH HUTCHCRAFT</b>	<b>AYE</b>
<b>RON INGE</b>	<b>AYE</b>
<b>CARLA JOHNSTON</b>	<b>AYE</b>



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

DATE OF TRANSMITTAL HEARING: September 23, 2009

**A. BOARD REVIEW:** Staff provided a brief summary of the proposed amendment. The Board provided no comment on the proposed amendment. No member of the public spoke on the amendment.

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

The Board of County Commissioners voted to transmit the proposed amendment to the Department of Community Affairs

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

The Board of County Commissioners accepted the findings of fact as advanced by Staff.

**C. VOTE:**

**BRIAN BIGELOW**

            
**AYE**  
          

**TAMMARA HALL**

            
**AYE**  
          

**ROBERT P. JANES**

            
**ABSENT**  
          

**RAY JUDAH**

            
**AYE**  
          

**FRANK MANN**

            
**AYE**

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

DATE OF ORC REPORT: January 15, 2010

**A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS**

The Department of Community Affairs provided no comment concerning the proposed amendment as it was transmitted.

**B. STAFF RESPONSE**

Staff noted that the language changes recommended by the LPA and the County Attorneys Office had been left out of the transmitted staff report through a scrivener's error. Below is the language incorporating the recommended changes. The changes are indicated through use of double underlines and strikethrough format.

**OBJECTIVE 5.2: Redevelopment of Existing Multi-Family Residential Development:** To incentivize and promote cost effective and timely redevelopment of multi-family developments that were approved and developed prior to the adoption of the 1984 Lee Plan, in excess of the standard density range for their current Future Land Use Category.

**POLICY 5.2.1:** Over-density multi-family residential developments that lawfully achieved their density prior to the effective date of the Lee Plan (December 21, 1984), may be permitted to redevelop at their existing density. Over-density multi-family redevelopments will be considered on a case by case basis: ~~to determine the approval process to be followed to achieve redevelopment.~~

**POLICY 5.2.2:** When rezoning is required, the Planned Development zoning process must be utilized to prevent and mitigate adverse impacts to the surrounding areas and to ensure that appropriate site development regulations are incorporated into the development plans.

**POLICY 5.2.3:** In order to establish the: existing structures; number of dwelling units; floor area; existing water management systems and outfalls; and, impervious area on the subject property, all proposals for over-density multi-family redevelopment must provide the county with full documentation verifying this information: and establishing development was lawful when initially constructed. The documentation must include two site plans. One depicting existing development and another depicting the proposed plan of redevelopment. This information must be provided at a pre-application meeting with County staff.

**POLICY 5.2.4:** All redevelopment must conform to all height limitations in effect through other regulations.

**POLICY 5.2.5 4:** The site design of the proposed development must be compatible with surrounding land uses to the maximum extent possible.

**POLICY 5.2.6 5:** All wet retention and dry retention areas must be planted with appropriate native trees and herbaceous plant species.

**POLICY 5.2.7 6:** For sites located within the Coastal High Hazard Area, proposed redevelopment must:

1. Have sufficient elevation to address a storm surge from a land falling category 5 hurricane;
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4. Be equipped with emergency power and potable water supplies to last up to five days;
5. Be protected with adequate ventilation, sanitary facilities, and first aid medical equipment; and,
6. To reduce the impact on wildlife such as sea turtles and migrating birds, projects must be designed to minimize light pollution, sky glow and light trespass beyond the property lines by using appropriate light fixtures and other light management techniques: ~~To reduce the impact on wildlife such as sea turtles and migrating birds.~~ Techniques may include:
  - a. Utilizing fully shielded, full cut off luminaries; down style canisters with interior baffles on the balconies; pole lights less than 15 feet in height; bollard type fixtures with louvers; and other techniques acceptable to the Division of Environmental Sciences.
  - b. Up-lighting is prohibited. Mercury vapor and metal halide lamps are also prohibited.
  - c. Glass windows and doors must be treated to achieve an industry-approved, inside-to-outside light transmittance value of 45 percent or less.

Staff recommends adding the following definition of “Build-back” to the Lee Plan Glossary.

**Build-back** - replacing an existing structure or developed site with structures and/or development of substantially similar use, density and/or intensity.

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

DATE OF ADOPTION HEARING: March 3, 2010

**A. BOARD REVIEW:**

**B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

**1. BOARD ACTION:**

**2. BASIS AND RECOMMENDED FINDINGS OF FACT:**

**C. VOTE:**

**BRIAN BIGELOW**

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**TAMMARA HALL**

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**ROBERT P. JANES**

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**RAY JUDAH**

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**FRANK MANN**

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