

LEE COUNTY ORDINANCE NO. 10-03
(Babcock)
(CPA2006-08)

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN," ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA2006-08 (PERTAINING TO BABCOCK RELATED TRANSPORTATION IMPROVEMENTS) APPROVED DURING THE COUNTY'S 2008/2009 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Lee County Comprehensive Plan ("Lee Plan") Policy 2.4.1. and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners ("Board"); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on February 23, 2009 and July 27, 2009; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on September 23 and October 28, 2009. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2006-08 pertaining to the Babcock Ranch Transportation Improvements to the Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the October 29, 2009 meeting, the Board announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report." DCA issued their ORC report on January 15, 2010; and,

WHEREAS, on March 3, 2010, the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

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

SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt the amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "2008/2009 Regular Comprehensive Plan Amendment Cycle CPA2006-08, Babcock Related Transportation Improvements Ordinance."**

SECTION TWO: ADOPTION OF LEE COUNTY'S 2008/2009 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, as revised by the Board on March 3, 2010, known as CPA2006-08.

The corresponding Staff Reports and Analysis, along with all attachments for this amendment are adopted as "Support Documentation" for the Lee Plan.

Note: All text set forth below represents addition to the Lee Plan

OBJECTIVE 36.3: BABCOCK RANCH COMMUNITY. To minimize the development impacts of the Babcock Ranch Community (BRC) in Charlotte County on the Lee County transportation system, with the goal of protecting the rural nature of northeastern Lee County, and to assure the transportation impacts in Lee County, generated by the Babcock Ranch Community (BRC) approved in Charlotte County, are funded entirely by the BRC Independent Service District (ISD) or other BRC related funding mechanism. In addition, to provide a process by which these identified improvements are added to the Lee Plan Transportation Map Series and the Capital Improvement Program (CIP).

POLICY 36.3.1: Lee County views as a priority the proposed East-West Connector roadway and related interstate interchange and any other transportation/mobility improvements that will minimize the impacts in Lee County from the development of the BRC in Charlotte County. Lee County supports the use of the Lee County and Charlotte County MPO plan update processes in a comprehensive, coordinated, cooperative fashion to consider the need for, and location of, an East-West Connector roadway and related interstate interchange, as well as evaluation of transportation alternatives that might serve the projected need related to development of the BRC while minimizing the impacts to the rural nature of northeast Lee County. Upon inclusion in the appropriate MPO plan(s), funding for

the East-West Connector roadway or transportation/mobility alternatives will be allocated in accordance with Policy 36.3.3(c) below.

POLICY 36.3.2: The comprehensive transportation analysis of the BRC has identified the potential need for numerous transportation/mobility improvements in Lee County. In order to address the impacts of the development of the BRC in Charlotte County, additions to the Lee Plan Transportation Map Series and the CIP may be necessary.

- a. Lee County does not have the responsibility to fund the capital transportation/mobility improvements required by the development of the BRC in Charlotte County.
- b. As contemplated in the Interlocal Planning Agreement dated March 13, 2006, and the Babcock Ranch Community Road Planning Agreement dated May 23, 2006, the capital transportation/mobility improvements required by the development of the BRC will be funded entirely by the BRC Independent Service District (ISD) or other BRC related funding mechanism (hereinafter the Developer).

POLICY 36.3.3: Analysis of the development of the Babcock Ranch Community in Charlotte County identified potential transportation/mobility improvements beyond the financially feasible improvements currently reflected in the Lee Plan Transportation Map Series; therefore any future amendments to the Lee Plan Transportation Map Series related to the BRC will be consistent with the procedures set forth below:

- a. The funding necessary to construct the transportation/mobility improvements resulting from BRC development may exceed the proportionate share contribution anticipated from the BRC DRI increments. Developer contributions exceeding the DRI proportionate share assessment for a given increment may be necessary to satisfy the financially feasible standard required to support an amendment to the Lee Plan Transportation Map Series, as well as future amendments to the CIP.
- b. Prior to Lee County amending the Lee Plan Transportation Map Series and the CIP to include specific BRC-related transportation/mobility improvements, the ISD, or other BRC-related funding mechanism, will have to commit to fully funding these improvements if the proportionate share assessment does not fully fund these identified improvements.
- c. Developer contributions in excess of its DRI proportionate share assessment may be applied directly toward identified improvements through pipelining. The funding necessary to justify inclusion in the Lee Plan will be delivered via development agreements, interlocal agreements, or other mechanisms

acceptable to Lee County, which mechanisms will coincide with each increment of the BRC. Upon execution of a development agreement, interlocal agreement, or other mechanism acceptable to Lee County providing for full funding of the identified transportation/mobility improvement, the County will include the transportation/mobility improvement on the Lee Plan Transportation Map Series and the transportation/mobility improvements will be included in the Capital Improvements Program (CIP) as funded by developer contributions.

- d. Failure of the developer of the BRC to fully fund the transportation/mobility improvements necessary to serve the BRC will prevent the inclusion of those transportation/mobility improvements as amendments to the Lee Plan Transportation Map Series and the CIP.

POLICY 36.3.4: In recognition of the environmentally sensitive nature of the area, any transportation/mobility improvements in Lee County or within two miles of the Lee County border must include an analysis of the location and design of wildlife crossings. The wildlife crossings must be coordinated with the appropriate federal, state and local agencies including: South Florida Water Management District (SFWMD), Florida Fish and Wildlife Conservation Commission (FWC), Charlotte County, U.S. Fish and Wildlife Service (USFWS), and Lee County Division of Environmental Sciences.

SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

SECTION FOUR: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION FIVE: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SIX: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184(9), Florida Statutes, or until the Administrative Commission issues a final order determining the adopted amendment to be in compliance in accordance with 163.3184(10), Florida Statutes, whichever occurs earlier. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

THE FOREGOING ORDINANCE was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Hall. The vote was as follows:

Robert P. Janes	Aye*
Brian Bigelow	Nay
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Nay

* By telephone.

DONE AND ADOPTED this 3rd day of March 2010.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: Marcia Wilson
Deputy Clerk

BY: Tammara Hall
Tammara Hall, Chairwoman

DATE: 3/3/10



Approved as to form by:

Donna Marie Collins
Donna Marie Collins
County Attorney's Office

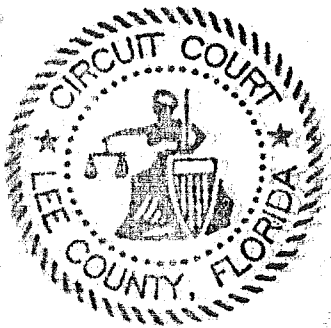
STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby certify that the above and foregoing is a true and correct copy of Ordinance 10-03, as approved by the Board of Lee County Commissioners in the Regular Meeting of March 03, 2010, and same filed in the Clerk of the Court's Office.

Given under my hand and seal, at Fort Myers, Florida, this 12th day of March, 2010.

CHARLIE GREEN,
Clerk of Circuit Court
Lee County, Florida



By: Shad Pierce
Deputy Clerk