



Protecting Southwest Florida's unique natural environment and quality of life ... now and forever.

23 September 2011

Commissioner Frank Mann
Chairman, Lee County Board of County Commissioners
PO Box 398
Ft. Myers, FL 33902

Sent Via E-Mail

Re: CPA2010-06: Pine Tarr, LLC - Amendment to Lee Plan Policy 14.1.5

Dear Chairman Mann and Lee County Commissioners:

At your meeting of June 13, 2011, you transmitted an amendment to policy 14.1.5 of the Lee Plan that would allow impacts to wetlands and potential buffer reductions within Commercial Planned Developments, if a State permit for such impacts was obtained. At the Transmittal Hearing, Lee County Staff from both the Planning and Environmental Sciences Departments conveyed significant environmental concerns about the proposed amendment and found the amendment inconsistent with the Lee Plan. Your approval was conditioned with direction for Staff to work with the parties to refine the language, in an attempt to satisfy outstanding concerns prior to the Adoption Hearing. Thus, the updated staff report of September 14, 2011 contains the requested compromise language, which would limit the applicability of the amendment to one specific development. However, it is important to note that Staff still recommends not adopting, as the compromise language does not adequately address the many concerns associated with this amendment.

The Conservancy of Southwest Florida concurs with Staff's recommendation not to adopt the proposed Pine Tarr amendment. Lee County has a history of consistently applying the Lee Plan to developments on Pine Island and this amendment threatens to reverse the course of sound planning and environmental protection that Lee County has previously maintained. There is simply no way to craft language that would make the intent of this amendment compatible with the established high standard of environmental protection, which is the hallmark of both the Lee Plan and the Greater Pine Island Community Plan. Thus, the Conservancy asks that you maintain the integrity of the Lee Plan and protect our local natural resources by voting not to adopt the Pine Tarr amendment.

Original Staff Concerns

In the staff report of May 27, 2011, County Staff's objection to the proposed amendment was based on a number of concerns regarding environmental protection and consistency with the Lee Plan including:

- Natural resource protection is an important theme in both the Greater Pine Island Community Plan and the Lee Plan and the proposed amendment is inconsistent with policies aimed at such protections.
- Wetlands on Pine Island are vitally important to adjacent Aquatic Preserves including: Matlacha Pass Aquatic Preserve, Pine Island Sound Aquatic Preserve, and Gasparilla Sound – Charlotte Harbor Aquatic Preserve.
- Runoff from urbanizing coastal areas has *already* negatively impacted seagrass beds.
- Wetlands play an important role in flood control on the island and the economics of the region.
- The proposed amendment weakens protections for aquatic preserves and wetlands.
- The proposed amendment is inconsistent with the Vision of Lee County and Pine Island and could set a precedent for reducing wetland protections elsewhere on the island.

It is important to note that these and many other concerns still remain and are part of the justification for Staff's current recommendation not to adopt, despite the required compromise language that is also included in the most recent staff report. While refining the language was suggested as a way to alleviate incompatibilities, the result is still an amendment that sets a dangerous precedent of weakening local control over environmental protection policies by allowing activities that could negatively impact water quality in the State aquatic preserves surrounding Pine Island.

After the Florida Department of Environmental Protection's (DEP) comments suggested a refined scope for the amendment, Staff's response indicated that the effect of a limited scope would likely be the same as the original language. The Conservancy agrees. It is clear that due to the economic and environmental sensitivity of the surrounding Outstanding Florida Waters, any amendment to the Lee Plan which could result in the wetland impacts and the lessening of protective buffers to State aquatic preserves should be avoided. We commend County Staff for their recognition of the importance of maintaining appropriate buffers between development/agricultural uses and our aquatic resources. We hope that the Commission will demonstrate the same commitment by not adopting this amendment.

Conservancy's Perspective

In addition to Staff's original concerns, the Conservancy believes that this proposal is especially dangerous considering the effects of the recent changes to growth management law. As a result of those changes, the responsibility of appropriately planning for and managing growth has been shifted almost entirely to local governments. Lee County is fortunate that the Lee Plan contains very specific

guidelines and policies that establish local oversight and assist the decision-making process.

Meaningful protection of wetlands is one theme that is addressed throughout the Lee Plan and it is imperative to recognize the importance of protecting existing wetlands adjacent to our aquatic preserve systems. To lessen those requirements by approving an amendment which allows for impacts, in the hope that re-creation of wetlands elsewhere will provide the same benefit, sets a dangerous precedent and weakens the intent of the Lee Plan.

It is also noteworthy that section 1.4 of the Basis of Review for Environmental Resource Permits (ERP) recommends simultaneous review by local government agencies.¹ ERP's are neither intended to replace nor preclude analysis by local governments and does not release them from their obligation to ensure consistency with their comprehensive plans. It is essential that local governments retain this authority and there is nothing in the District's documents that suggests it would be appropriate to forego that process as a result of obtaining a State permit.

Thus, the concept of weakening Lee Plan policies by allowing wetland impacts and a reduced buffer, if an applicant can obtain a State permit, is not only unwise but is an inappropriate deferral of necessary local oversight. Such an amendment was what the petitioner initially requested and the Conservancy continues to oppose this language, in addition to the compromise language contained in the September Staff Report.

This amendment was, from its inception, destructive to wetlands and inconsistent with Lee County planning goals. That threat has not diminished and has, in fact, been reiterated by DEP's concerns regarding wetland impacts and Staff's finding of sufficient commercial properties on Pine Island as part of their repeated recommendation for denial.

The bottom line is that the applicant is interested in pursuing development that is too large and impactful for the proposed site and is thus inconsistent with the Lee Plan. Instead of redesigning, reconfiguring or reducing the project footprint to achieve consistency, they instead are attempting to change the rules to suit their private interests. If Lee County allows policy language to be crafted in conformance to one specific project's site plan, the County will surely be requested to make similar changes in the future. It is a slippery slope that must be avoided. The intent of Objective 14.1 and Policy 14.1.5 is clearly established to preserve the integrity of existing wetlands from encroachment and to require a 50-foot upland buffer between development and the existing wetlands and Policy 14.1.5 should remain intact.

The Conservancy understands that the inclusion of language to limit the applicability of this amendment as part of the Staff Report was required per your direction at

¹ South Florida Water Management District. "ERP Basis of Review." Aug. 2010. Access: <http://www.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/bor_erp_08_20_2010.pdf>

Transmittal. However, this language does not appropriately address the numerous concerns expressed by Staff and the community. At a time when sweeping growth management legislation has shifted almost all responsibility for managing growth to local governments, this amendment would supplant that authority by giving ERP permits the ability to substitute for local decision-making. With these concerns in mind, the Conservancy respectfully asks that you not adopt this amendment to the Lee Plan Policy 14.1.5.

Please contact us should you have any questions or would like clarification regarding our concerns.

Sincerely,

A handwritten signature in cursive script that reads "Nicole Johnson".

Nicole Johnson
Governmental Relations Director
Conservancy of Southwest Florida
(239) 403-4220

CC: Matt Noble