

**CPA2012-01
RIVER HALL
PRIVATELY SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Non-Transmittal Document

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September 25, 2013

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2012-01**



Text Amendment



Map Amendment

	This Document Contains the Following Reviews
✓	Staff Review
✓	Local Planning Agency Review and Recommendation
✓	Board of County Commissioners Hearing for Transmittal
	Staff Response to Review Agencies' Comments
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: August 16, 2013

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVES:

GreenPointe Communities, LLC. / Dr. Dave Depew, Ph. D., AICP, Morris-Depew Associates, Inc.

2. REQUEST:

Amend the future land use category of 1,064 acres of land within the Rural Future Land Use Category and 223 acres of land within the Wetlands Future Land Use Category to 153 acres of Conservation Lands Wetlands, 264 acres of Conservation Lands Uplands, and 870 acres of Sub-Outlying Suburban.

Amend Policy 5.1.10 to allow density from lands designated as Conservation Lands Uplands to be relocated to contiguous developable uplands at the same underlying density as the developable uplands.

Also amend Table 1(b), Year 2030 Allocations, to adjust the acreage allocations for the Fort Myers Shores Planning Community to provide an allocation for the Sub-Outlying

Suburban future land use category by lowering the allocation to the Rural future land use category.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

There are advantages and disadvantages in transmitting this proposed amendment to the Lee Plan. Reasons to support transmittal, include: increased development in the already approved and cleared River Hall development footprint; placing conservation easement lands into the Conservation Lands future land use category, including lands adjacent to public lands in the Hickey Creek Mitigation Park. The applicant has committed to a variety of onsite and offsite improvements to address the Board's required finding of "overriding public necessity" by providing needed and desirable community amenities. This includes provision of public trail facilities and trail head park to provide enhanced and greater non-vehicular access and recreational opportunities; expediting construction of a second gated access point to the south, which will facilitate school district and emergency vehicle access to River Hall; escrowed funds for the construction of a stoplight when warrants are met at the entrance to River Hall on S.R. 80; construction of an 8-foot wide pathway along SR 80 between River Hall and Buckingham Road; and, accommodating needed drainage for the East County Water Control District.

Reasons not to transmit this amendment include: increased traffic on Palm Beach Boulevard and the failure of the intersection of River Hall Parkway and S.R. 80 and possible failure of the intersection of Buckingham Road and S.R. 80; adopted Lee Plan policy language for the Caloosahatchee Shores Community Plan that discourages amendments to Rural lands unless there is a finding by the Board that there is an "overriding public necessity" for the amendment; the incremental erosion of the Rural category; creating enclaves of future land use classifications; increasing the population accommodation capacity of the Future Land Use Map; increasing population near mitigation areas such as the Hickey Creek Mitigation Park; Map amendment require provision of additional urban services, such as LeeTran.

The Board of County Commissioners must weigh these improvements and determine whether or not they satisfy an overriding public necessity. This finding must be made to assure consistency with Lee Plan Policy 21.1.5 which is part of the Caloosahatchee Shores Community Plan.

After weighing all of these factors, and the other issues that are discussed in the staff report, staff recommends that the Board of County Commissioners **transmit** the proposed amendment as identified in Attachment 1.

If the Board of County Commissioners is desirous of transmitting the proposed amendment, staff recommends that the Board of County Commissioners transmit the staff modifications to Table 1(b) as well as the modified text amendment.

MAPS:

Staff recommends the following modifications to Lee Plan maps as identified in Attachment #1:

- On Map 1, page 1 of 1, amend the future land use category of 1,064 acres of land within the Rural Future Land Use Category and 223 acres of land within the Wetlands Future Land Use Category to 153 acres of Conservation Lands Wetlands, 264 acres of Conservation Lands Uplands, and 870 acres of Sub-Outlying Suburban.

TEXT:

Transmit new policy 5.1.11 as identified in Attachment #1.

TABLE:

Transmit modifications to Table 1(b) as identified in Attachment #1.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- GreenPointe Communities, LLC. submitted the current comprehensive plan amendment on September 27, 2012.
- The subject property has been subject to two previous comprehensive plan amendments, CPA2004-10 and CPA2005-07. These previous requests were similar in seeking 2 dwelling units per acre, and were not approved.
- The property has already been approved for 1,999 dwelling units; 15,000 square feet of office, and 30,000 square feet of retail.
- The proposed amendment would create enclaves of future land use categories.
- The development areas of the subject site have been cleared, consistent with the existing Master Concept Plan and approved development orders. The additional units will not impact required preserve areas or open space, but will be constructed in areas already approved and cleared for development;
- There are sufficient water and sewer facilities and capacity to serve the proposed increase in development.
- The subject property is located in the Fort Myers Shores Planning Community as depicted on Lee Plan Map 16.
- Table 1(b) currently has insufficient residential acreage allocated to accommodate the full buildout of the proposed land use changes but this circumstance is addressed and resolved by staff's recommended changes to the Table.
- The Lee Plan does not provide a definition of "overriding public necessity."

- To adopt the proposed amendment, the Board of County Commissioners must make a determination that the amendment to the Future Land Use Map, including the proposed amenities, constitute an “overriding public necessity.”
- The developer has addressed community needs that have been identified within the Caloosahatchee Shores Community Plan.
- The requested Future Land Use Map amendment would remove approximately 27 percent of the Rural lands category from the total Rural designation in the Fort Myers Shores Planning Community.
- Currently there is not a need for the additional dwelling units that the applicant is requesting but the application addresses identified community needs.
- The current character of the subject site is that of a suburban gated golf course subdivision. The proposed amendment will not substantially alter this character.
- The concurrent rezoning request would limit the proposed density to approximately 1.5 dwelling units per acre, an increase of .5 dwelling units per acre.

C. PROJECT SUMMARY DISCUSSION:

The River Hall Comprehensive Plan Amendment was filed by GreenPointe Communities LLC. on September 27, 2012. The amendment proposed to reclassify portions of the River Hall development. The applicant has also filed a companion rezoning application that is being reviewed concurrently by the Lee County Zoning Division. Florida Statutes Chapter 163.3184(12) provides that “At the request of an applicant, a local government shall consider an application for zoning changes that would be required to properly enact any proposed plan amendment transmitted pursuant to this subsection.” This requires Lee County to take into account the concurrent request for an amendment to the Master Concept Plan (MCP), DCI2013-00003, on the subject site. The proposed text and map amendments would allow an additional 1,499 dwelling units to be permitted within the River Hall residential community. The proposed amendment to the MCP filed under DCI2013-00003, would allow the applicant to increase the number of residential dwelling units in the River Hall community by 1,000 and include additional recreational uses within the commercial portion of the community. The applicant has provided that the additional units will be located in areas that have already been slated for development through the existing approved MCP.

A brief zoning history is provided below:

Hawks Haven:

The development was originally named Hawk’s Haven and was approved as a Residential Planned Development, RPD by the adoption of Zoning Resolution Z-99-056 on October 18, 1999. This approval allowed the development of up to 1,598 dwelling units on 1,797.45 acres.

The RPD zoning was amended administratively by ADD2004-00067A. This amendment identified an emergency access, revised conditions, relocated the open storage and golf maintenance faculties, and identified the location of a 20 acre school site.

Subsequent local development order approvals for development of infrastructure, residential home site, golf course, and other amenities were approved.

River Hall:

On September 19, 2005, the Board of County Commissioners adopted Zoning Resolution Z-05-051. This adopted a rezoning from RPD (original Hawk's Haven) and AG-2 to Residential Planned Development, RPD and Commercial Planned Development, CPD for an enlarged 1,978.44± acre development now named River Hall. This approval added 181 acres to the development and permitted up to 1,999 dwelling units; 15,000 square feet of office, and 30,000 square feet of retail.

D. BACKGROUND INFORMATION

1. EXISTING CONDITIONS:

SIZE OF PROPERTY: 1,978 Acres.

SIZE OF AMENDMENT AREA: 1,287 Acres.

PROPERTY LOCATION: The subject property is located south of Palm Beach Boulevard (SR 80), approximately 6 miles east of I-75, east of Buckingham Road.

EXISTING USE OF LAND: The subject property is currently zoned for residential uses, including single-family and multi-family units. The subject property also contains indigenous preserve areas and recreational amenities, such as a golf course. Residential portions of the property are developed in a typical suburban pattern.

CURRENT ZONING: Residential Planned Development (RPD), and Commercial Planned Development (CPD).

CURRENT FUTURE LAND USE CATEGORY (AMENDMENT AREA): Rural future land use category (1,064 acres), and Wetlands future land use category (223 acres).

2. INFRASTRUCTURE AND SERVICES:

FIRE: Fort Myers Shores Fire and Rescue Service District.

EMS: Lee County EMS service area.

LAW ENFORCEMENT: Lee County Sheriff's Office.

SOLID WASTE: The subject site is located in solid waste Service Area 4.

MASS TRANSIT: LeeTran does not currently serve the subject site.

WATER AND SEWER: The subject site is within the Lee County utilities water and sewer service areas. The subject site is served by the Olga Water Treatment Plant and the City of Fort Myers Central Advance Waste Water Treatment Plant.

3. COMPREHENSIVE PLAN BACKGROUND:

In 1984, Lee County adopted its first official Future Land Use Map (FLUM) as an integral part of its comprehensive plan. On that map, the majority of the subject property was designated within the Rural land use category. Density for the Rural category was established by the 1984 plan with a maximum density of up to 1 dwelling unit per acre. The Rural land use category was described as areas that “are to remain predominately rural, that is, low density residential use and minimal non-residential land uses that are needed to serve the rural community.” There are also several areas in the Wetland future land use category within the amendment area on the subject property. The application identifies 223 acres within the Wetland future land use category. The category permits residential and recreational uses that do not adversely affect the ecological functioning of these areas. The maximum density in the Wetland future land use category is 1 dwelling unit per 20 acres.

Beginning in 2004 there has been a number of requests to amend the Lee Plan, affecting the subject property. In fact two private amendments seeking increased density were requested and denied by the Board of County Commissioners.

Following these private requests a publically sponsored amendment was pursued by the East Lee County Council (ELCC). This proposal sought to amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to the remaining rural lands category within the Caloosahatchee Shore Community will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners. The Board of County Commissioners adopted this amendment as Policy 21.1.5. This policy’s intent must be considered in reviewing the current request. These three proposed Lee Plan amendments are summarized below.

CPA2004-00010: Hawks Haven. A request to change approximately 1,623 acres of Rural designated land and 79 acres of Suburban land to Outlying Suburban with a density limit of 2 units per acre and Public Facilities for 20 acres of land for a school site.

- February 27, 2004: Application Submitted.
- May 23, 2005: Local Planning Agency Hearing. LPA passed a motion recommending the Board not transmit the amendment with a 5 to 2 vote.

- June 1, 2005: Board of County Commissioners Transmittal Hearing. A motion was made and seconded to not transmit and **the applicant withdrew the case before the BoCC voted on the motion.**

To address the anticipated transportation impacts of an additional 1,000 proposed dwelling units on surrounding roads, the applicant, as part of CPA2004-10, proposed to amend Lee Plan Table 1(a) to add the following language:

The property that is the subject of CPA2004-10 is eligible for an increase from 1,999 to 2,999 dwelling units upon the execution of a development agreement, which legally obligates the developer of the property to pay a proportionate share of the cost of six-laning State Road 80 from State Road 31 to Buckingham Road. No development orders may be issued for the additional units until the construction of the improvement is included in the first three years of the County's Capital Improvement Program or the Florida Department Of Transportation Work Program.

CPA2005-00007: River Hall. A request to change 1,647 acres of land designated as Rural and 79 acres of land designated Suburban to Outlying Suburban with a density limit of 2 units per acre and Public Facilities, subject to text limiting the site to 2,800 units.

- September 30, 2005: Application submitted.
- November 27, 2006: Local Planning Agency Hearing. A motion was made recommending the Board not transmit with a 3 to 2 vote (one absent and one seat vacant).
- December 13, 2006: Board of County Commissioners Transmittal Hearing. Staff recommends not transmitting, but offers an alternative amendment with commitments offered by the applicant to provide off-site improvements, which would further mitigate the impacts. The BoCC voted 4 to 1 to transmit the alternative amendment.
- May 16, 2007: Board of County Commissioners Adoption Hearing. Staff recommends adopting the alternative amendment language. Following considerable public comment **the BoCC voted 4 to 1 to not adopt the proposed Amendment.**

In the CPA2005-07 Plan amendment the applicant provided that there would be a development agreement to fund the following improvements to the intersection of SR 80 and Buckingham Road:

- Add 2nd Northbound to Westbound Left Turn Lane
- Add 2nd Westbound to Southbound Left Turn Lane
- Add Northbound Right Turn Lane
- Add Southbound Right Turn Lane

- Add 2,500 foot 3rd Eastbound Through Lane
- Add 2,500 foot 3rd Westbound Through Lane

The development agreement would also specify that the applicant would fund the following improvements to the intersection of SR 80 and SR 31:

- Add 2nd Southbound to Eastbound Left Turn Lane
- Add 2nd Eastbound to Northbound Left Turn Lane
- Add a third through lane Westbound in advance of the SR 31 intersection

CPA2005-07 also included an amendment to Table 1(a) that proposed the implementation of these agreements. This proposed footnote is reproduced below:

The property that is the subject of CPA 2005-00007 is eligible for an increase from 1,999 to 2,800 dwelling units upon execution of a development agreement that specifies the payment of the funds necessary to program the construction of the intersection improvements specified in Policy 36.1.1 (currently estimated at \$3,180,076) and any related right-of-way acquisition (including the costs of condemnation if necessary). Construction on the additional 801 units may not begin until the specified intersection improvements are complete, and the payment for the improvements does not exempt the project from transportation concurrency requirements at the time of local development order approval. The development order for southerly access to the River Hall development must have a Certificate of Completion prior to the issuance of the building permit for the 1,001st residential unit in the River Hall development. In addition, the initial sale of 80 of these units must be made available to families that qualify as moderate income families in accordance with Lee Plan definitions.”

CPA2007-00001: Amendment to the Caloosahatchee Shores Community Plan. A Board sponsored request from the ELCC to prohibit amendments to the Future Land Use Map within the Caloosahatchee Shores Community Planning Area that would increase the density of the rural lands category without a BoCC finding of “overriding public necessity.”

- April 2, 2007: Application Submitted.
- December 17, 2007: Local Planning Agency Hearing. The LPA voted 7 to 0 to transmit the proposed amendment.
- October 22, 2008: Board of County Commissioners Transmittal Hearing. The BoCC votes 5 to 0 to transmit the proposed amendment.
- February 25, 2009: Board of County Commissioners Adoption Hearing. **The BoCC voted 5 to 0 to adopt the proposed amendment.**

The community initiated this amendment in direct response to the two previous amendment requests involving the River Hall property. The community desired a higher standard to redesignate rural lands.

4. SURROUNDING ZONING, LAND USES, AND FUTURE LAND USE DESIGNATIONS

The surrounding future land use categories consist of Urban Community, Suburban, Sub-Outlying Suburban, Commercial, Rural, Conservation Lands (Uplands and Wetlands), and Wetlands.

The lands to the south of the subject property are designated Urban Community and are within Lehigh Acres. The Urban Community lands within Lehigh Acres have been subdivided into ¼ acre single-family parcels and are primarily zoned RS-1. There are intermittent single-family homes developed in the area adjacent to the proposed amendment.

The Suburban lands are located near the northwest corner of the subject property and consists of single-family homes in RPD and RS-1 zoning districts. The approved density of these residential developments ranges between 2 and 4 units per acre. The Sub-Outlying Suburban lands are located near the southwest corner of the subject property and consist of vacant property that has been zoned for residential development (RPDs). These lands include two separate projects known as Buckingham 320 (DCI2004-00090) and Portico (DCI2004-00031). Buckingham 320 and Portico were approved with 2 dwelling units per acre. The commercial lands are located on the north side of State Route 80, directly across from the River Hall entrance, River Hall Parkway. The property in the Commercial future land use category is vacant and is zoned AG-2. These commercial lands are subject to a rezoning request, DCI2012-00059, Olga Square. This rezoning request seeks approximately 371,000 square feet of various commercial uses. Lands in the Conservation Lands future land use category are located to the east in the Hickey's Creek Mitigation Park. It is anticipated that the Conservation Lands will remain substantially in their natural state.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

The subject property is located on Palm Beach Boulevard, State Route 80, approximately 0.8 miles east of Buckingham Road. The property is within the Caloosahatchee Shores Community Planning area, directly to the north of the Lehigh Acres Planning Community. The property is adjacent to the regionally significant Hickey's Creek Mitigation Park. These location attributes and others will be further discussed below.

The applicant is concurrently seeking an amendment to the existing zoning resolution and Master Concept Plan, which would permit up to 2,999 dwelling units within the River Hall residential development. The proposed rezoning will result in a density that is inconsistent with the density

permitted in the Rural future land use category, and is therefore inconsistent with the Lee Plan. To address these inconsistencies, that applicant has requested a privately initiated plan amendment. The proposed Lee Plan amendment, CPA2012-00001, consists of three amendments to the Lee Plan, as summarized at the beginning of this report:

According to the April 2, 2013 application materials, the three amendments would allow up to a maximum 3,633 residential dwelling units. However, the proposed amendment will be further conditioned by the proposed Master Concept Plan and zoning amendment, DCI2013-00003, in accordance with Florida Statutes Chapter 163.3184(12). The three proposed amendments to the Lee Plan together with the proposed rezoning will allow a maximum of 2,999 units or an additional 1,000 dwelling units on the property. It should be noted that while Florida Statutes do require that concurrent rezoning requests be considered during proposed amendments to comprehensive plans, this applicant or future developers of the property would have the ability to rezone the property to achieve 3,633 dwelling units without additional amendments to the Lee Plan.

The applicant has provided in the application materials that the proposed additional units will be constructed within the development footprint that has already been approved, with no impacts to existing or approved conservation areas or community amenities. The applicant provides that “The existing development footprint will be utilized for the additional density promoting the clustering of residential density and uses to improve the efficient use of land and existing utilities.” This assures that the existing development footprint will be utilized and that no additional direct impacts will be made to the development’s environmental features.

Environmental Sciences Staff has concerns that the additional units allowed by the increase in density will lead to increased and possibly negative human/wildlife interactions. While it is true the additional units will not directly impact current conservation areas, no additional protection measures have been proposed by the applicant that would help to minimize the increase in human/wildlife interactions. This concern is discussed in more detail in the “Environmental Considerations” section and in the Environmental Sciences memo attached to this staff report as Attachment 2.

There is also concern that the additional residential units, regardless of where they are constructed will cause traffic/transportation issues. Additional units will generate additional vehicle trips, which will increase level of service deficiencies at the project entrance on S.R. 80, and could cause level of service deficiencies at nearby intersections such as Buckingham Road/S.R. 80 and S.R. 31/S.R. 80. In order to address traffic concerns the applicant has committed to escrowing funds for installation of a traffic signal at the intersection of S.R. 80 and River Hall Parkway. The applicant has also committed to accelerating the construction of a second, gated entrance to Lehigh Acres.

There is also a concern that the re-designation of the land from Rural to Sub-Outlying Suburban will change the future land use category from one that is considered non-urban to one that is considered urban. LeeTran, which does not currently provide service to this area, has expressed concern that the designation of this land, as an urban future land use category, may necessitate

that urban types of services, such as transit, are provided. LeeTran states that this would result in additional unfunded needs.

This concern is backed by Objective 1.1 of the Lee Plan, which states that urban future land use categories *“are based upon soil conditions, historic and developing growth patterns, and existing or future availability of public facilities and services.”* Whereas, Policy 1.4.1, the descriptor policy of the Rural future land use category states that *“These areas are not to be programmed to receive urban-type capital improvements, and they can anticipate a continued level of public services below that of the urban areas.”* Additional public improvements and services may be demanded from future residents.

Proposed Sub-Outlying Suburban Future Land Use category

The applicant is proposing to amend the future land use designation for 870 acres of the River Hall development from Rural to Sub-Outlying Suburban. The proposed amendment does not include the entirety of the River Hall planned development because the applicant does not have unified control over all of the lands. Therefore, there are tracts of land that will remain in the Rural category. The proposed amendment would create enclaves of land that would not match the future land use category of the surrounding properties within the development. In other words lots across the street from each other or even next to each other would be in different land use categories if the amendment was approved. The applicant's representatives have stated that the county could resolve this issue by amending these areas through a publicly sponsored amendment to the Plan.

The subject property is adjacent to other urban designated areas. Specifically, the properties to the west are designated as Suburban and Outlying Suburban on the Future Land Use Map. The Outlying Suburban property has been zoned for residential use, and site improvements have been made, however it remains mostly vacant. There are also urban designated lands to the south, within Lehigh Acres, that are designated as Urban Community on the Future Land Use Map. The requested amendment is compatible with the adjacent residential developments to the west and south.

The properties to the north and east have non-urban designations. To the east is the Hickey's Creek Mitigation Park, a Lee County owned preserve. The proposed amendments to the Future Land Use Map would redesignate 417 acres of the subject site as Conservation Lands. The proposed addition to the Conservation Lands category includes areas just south of SR 80 along the entrance road, a large mostly wetland area near the center of the project, several areas located along the FP&L easement area, and a large area located along the eastern boundary of the River Hall development. This last area is proximate to the Mitigation Park, which is located to the east. The 417 acres are part of 465.2 acres of overall required indigenous open space that is provided through the currently approved RPD. Of the 417 acres of proposed Conservation Lands, 349 acres also are currently covered by conservation easements. Placing these lands into the Conservation Lands category does provide an additional layer of protection for these lands. While the proposed Conservation Lands are a positive aspect of the proposed Lee Plan amendment, no additional preservation areas are being proposed either through the plan amendment or the concurrent rezoning.

The properties to the north are lands within the Rural future land use category, the same future land use category as the current River Hall designation. These properties include vacant agricultural lands and large lot residential parcels. Currently the Rural future land use category extends from Lehigh Acres to north to the Caloosahatchee River and in fact further to the north and east.

The applicant has stated that the proposed designation provides a step down in density from Lehigh Acres towards the Rural lands to the north. The applicant asserts that the project promotes infill and that the community is not remote. In reality, the property is an edge Rural lands interface property. The property is located on the edge of urban designated lands in Lee County. Approving the request would move this interface further north and east.

The subject site is located within the Caloosahatchee Shores Community Planning Area as identified by Lee Plan Map 1, Page 2 of 8. The Caloosahatchee Shores Community Plan was undertaken by the Caloosahatchee Shores Community Planning Panel working as a sub group of the ELCC. The planning area encompasses that portion of the Fort Myers Shores planning community located east of I-75. Goal 21 of the Lee Plan is the Goal specific to the Caloosahatchee Shores Community. This goal expresses the communities desire to protect the existing community character, natural resources, and quality of life, while promoting new development, and redevelopment. The goal specifies “incentives for redevelopment, mixed use development, and pedestrian safe environments.” Goal 21 also specifies “maintaining a more rural identity for the neighborhoods east of I-75.” The Caloosahatchee Shores Community Plan (and Goal 21) was adopted on October 23, 2003. Goal 21 is reproduced below:

GOAL 21: CALOOSAHATCHEE SHORES: *To protect the existing character, natural resources and quality of life in Caloosahatchee Shores, while promoting new development, redevelopment and maintaining a more rural identity for the neighborhoods east of I-75 by establishing minimum aesthetic requirements, planning the location and intensity of future commercial and residential uses, and providing incentives for redevelopment, mixed use development and pedestrian safe environments. This Goal and subsequent objectives and policies apply to the Caloosahatchee Shores boundaries as depicted on Map 1, page 2 of 8 in the Appendix.*

Lee Plan Objective 21.1 addresses Caloosahatchee Shores community character. This objective specifies that the community will draft and submit regulations, policies and discretionary actions affecting the character and aesthetic appearance of the community for Lee County to consider for adoption and enforcement to help create a visually attractive community. The community submitted a plan amendment on April 2nd, 2007 to add a policy restricting future map amendments to rural lands. This became CPA2007-01 which was unanimously adopted by the Board of County Commissioners on February 5, 2009. This amendment added Policy 21.1.5, reproduced below:

POLICY 21.1.5: *One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its’ rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after May*

15, 2009, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

The applicant is proposing to redesignate 1, 064 acres of Rural lands and 223 acres of Wetlands to 870 acres of Sub-Outlying Suburban and 417 acres of Conservation Lands. The applicant is proposing to redesignate 870 acres from a non-urban designation to an urban designation. Currently there are 3,188.3 acres of Rural lands within the Fort Myers Shores Planning Community. The requested Future Land Use Map amendment would remove approximately 27 percent of the Rural lands category from the total Rural designation in the Fort Myers Shores Planning Community.

The Lee Plan does not provide a definition of “overriding public necessity.” There are multiple ways that the phrase “overriding public necessity” could be interpreted. The phrase is in a policy that acknowledges an important aspect of the Community’s plan is to retain its’ rural character and rural land use where it currently exists. One way in which the policy could be interpreted is that if there is a demonstrated need for additional urban lands to accommodate additional urban or suburban uses and densities. There are already thousands of acres of designated vacant urban land to the south and west of the subject site. These lands in addition to being designated for urban/suburban uses are in fact zoned for residential uses. The River Hall property itself currently is zoned for 1,999 dwelling units, but at the time this is being written only 324, or about 16 percent, of these units have been constructed. These facts lead staff to conclude that currently there is not a need for the additional dwelling units that the applicant is requesting. But on the other hand, the “overriding public necessity” could be interpreted based on the request’s satisfaction of identified community needs, such as additional infrastructure improvements.

The applicant has submitted a document to address the required Board finding of overriding public necessity to amend the Future Land Use Map affecting Rural designated lands. This document is included in the application materials. This document generally identifies past and current market conditions for the River Hall Property and community needs that are addressed by the proposed amendment. Concerning market conditions the document includes the following: context of the current status of the subdivision; home sales started in 2006; states that home sales became stagnant during the global recession; subdivision was partially completed when the recession occurred; original developer filed bankruptcy; some members of the development team sought new investment partners, and purchased the property in foreclosure; eliminated debt. The document provides that the new owners have invested more than \$20 million in the community.

The document goes on to state that the applicant “has utilized the goals, objectives, and policies of the Caloosahatchee Shores Community Plan to demonstrate how the proposed amendment meets the public necessity test for Lee County and the Caloosahatchee Shores Community.” The document from the applicant identifies the following items in the demonstration of necessity:

1. restore the property values and marketability of the development; adjust density to allow the community to succeed and flourish;
2. promote infill in an area where infrastructure capacity is available;

3. accommodate population growth within this area of the County without negatively impacting open space, natural resources, or existing agriculture;
4. add additional public recreational uses, including a public trailhead park, and multi-modal trails for River Hall residents and the surrounding community;
5. additional uses serve a public necessity by creating a publicly accessible mixed use center and providing additional public facilities available to all residents of Caloosahatchee Shores;
6. expedite construction of the south access upon the approval of the proposed amendments and enable emergency services and the school district to travel through the River Hall Community to meet service calls and reach River Hall Elementary;
7. fund an 8 foot wide pathway from the River Hall entry to the intersection of Buckingham Road and State Road 80;
8. escrow up to \$500,000 for the construction of a traffic light at the intersection of River Hall Parkway and State Road 80;
9. flood relief may be provided to the East County Water Control District

The document includes the conclusion:

The benefits described herein are believed to be more than adequate to demonstrate the proposed Lee Plan amendment is a public necessity. As discussed above, these benefits include, but are not limited to, the following:

1. *Provision of public multi-modal trail facilities within the project to provide enhanced and greater non-vehicular access to amenities within the project as well as recreational, shopping, and school facilities outside of River Hall for the residents of River Hall as well as the Caloosahatchee Shores Community.*
2. *Greater utilization of existing infrastructure to accommodate growth in the area.*
3. *Greater utilization of land areas already committed to development within River Hall.*
4. *Expediting construction of a second access point to the south, which will facilitate school district and emergency vehicle access to River Hall.*
5. *Escrowed funds for the construction of a stoplight when warrants are met at the entrance to River Hall.*
6. *Construction of an 8-foot wide pathway along SR 80 between River Hall and Buckingham Road.*
7. *Providing enhanced public recreational opportunities for residents of River Hall and Caloosahatchee Shores, including dedication of a new park within the community that will be open to the public.*
8. *Accommodating drainage needs for the East County Water Control District.*

9. *Re-establishing the economic vitality and property values of the project in the post-recession era.*

Further, because the proposal meets the public necessity criteria, it is also by definition consistent with the Lee Plan as it now exists. Finally, because the proposed land use application has been accompanied by a request to modify the RPD zoning Master Concept Plan, additional conditions can be recommended in order to assure compatibility.

Staff believes that the trail and trailhead park and the sidewalk along SR 80 do address identified public infrastructure needs. Objective 21.5: Community Facilities/Parks directs the county to work with the Caloosahatchee Shores community to provide and facilitate the provision of a broad mix of community facilities. Policy 21.5.1 specifically states that the community will work with a variety of governmental entities to provide easy access to passive recreational opportunities, parks, pedestrian and equestrian trails. This policy also discusses the potential for public/private partnerships to address this need. Policy 21.5.3 provides that the county will ensure that the recreational needs of the community will be met and integrated into the surrounding developments and open space areas. The policy provides further detail, such that “The concept would be for a park to act as a hub, connected to other open space/recreational opportunities through pedestrian, bicycle, pr equestrian trails, either along public rights of way or through adjacent developments.” The applicants need document, submitted on August 5th, provides the following about the proposed public park: “The proposed public park and trailhead will provide a hub between the adjacent public uses and the multi-modal trails, ultimately connecting to Hickey’s Creek Mitigation Park as well as other open space and recreational opportunities within the Caloosahatchee Shores Community.” The proposed amendment to the Lee Plan and the RPD will address needs identified in Objective 21.5 and its supporting policies.

The proposed multi-modal trail, open to the public, along the northern boundary of the River Hall Community also addresses a broader regional county need identified in Policy 77.3.7 and on Lee County Greenways Multi-Purpose Recreational Trails Master Plan identified on Lee Plan Map 22. The applicant has agreed to permit and construct approximately three miles of the Pine Island-Hendry Trail between Buckingham Road and the Hickey’s Creek Mitigation Park.

The Board of County Commissioners must weigh these improvements and determine whether or not they satisfy an overriding public necessity. This finding must be made to assure consistency with Lee Plan Policy 21.1.5 which is part of the Caloosahatchee Shores Community Plan.

Policy 21.1.5 must be analyzed by taking into account all of the provisions of the Community’s Plan, Goal 21. Goal 21 assumes that there will be new and redeveloping residential developments within the community, but requires the protection of existing character. The new or additional units are proposed to be constructed within areas that that have already been impacted and are permitted to be suburban in character. Policy 21.1.5 states that the goal “is to retain its’ rural character and rural land use.” The additional units will not impact the community’s character as the land is already approved for a suburban style residential development. However, the proposed Future Land Use Amendment from the Rural category necessitates that community needs are addressed. Because the character of the subject property will not be substantially altered Staff finds that the proposed improvements, identified in the

draft development agreement (Attachment 6), address identified public needs. The Board of County Commissioners, through Policy 21.1.5, requires that the Board must find whether or not these improvements satisfy “overriding public necessity” to approve the proposed amendment.

Policy 1.1.11 is the descriptor policy for the Sub-Outlying Suburban future land use category. This policy provides that these areas contain predominately low-density residential development. It is intended that *“these areas will develop at lower residential densities than other Future Urban Areas and are placed within communities where higher densities are incompatible with the surrounding area and where there is a desire to retain a low-density community character.”* The standard density range is between 1 and 2 dwelling units an acre. Commercial development greater than neighborhood centers and industrial land uses are not permitted. The applicant’s concurrent rezoning will limit the actual density of the proposed redevelopment to 1.5 units an acre, consistent with the Sub-Outlying Suburban category. Staff finds that the concurrent rezoning and the limitations of the Sub-Outlying Suburban future land use category will serve to protect the existing character of the surrounding community.

Proposed Amendment to Policy 5.1.10

The applicant is seeking to utilize density from lands that the applicant is agreeing to re-designate to Conservation Lands – Uplands. The applicant is proposing a text amendment to Policy 5.1.10 to make this possible by generating density at the contiguous Sub-Outlying Suburban rate. The applicant is also proposing a modification to Policy 5.1.10, specifically paragraph number 3 to eliminate the requirement for unified control on the date the policy was initially adopted and replace with unified control at the time the Planned Development rezoning is adopted or amended.

The existing Future Land Use Map within the amendment area includes 1,064 acres of Rural lands and 223 acres of Wetlands. Based on Lee Plan densities, 1,075 units can be derived from the proposed amendment area. The River Hall total property could be permitted up to 2,134 dwelling units under the existing Future Land Use Map. The proposed amendments to the Future Land Use Map include 870 acres of Sub-Outlying Suburban, 264 acres of Conservation Lands – Upland, and 153 acres of Conservation Lands – Wetlands. Based on Lee Plan densities, 1,740 units could be derived from the lands proposed to be Sub-Outlying Suburban. The proposed amendments to the Future Land Use Map alone would allow 2,799 without including the Conservation Lands, an increase in 665 dwelling units. The applicant’s proposed rezoning, DCI2013-00003, seeks to allow 2,999 total dwelling units within the River Hall Community. Including the identified lands within the Conservation Lands category, and arriving at the applicant desired level of development on the property, requires that density from these lands must be utilized.

The proposed text amendment to Lee Plan Policy 5.1.10 is as follows:

POLICY 5.1.10: *In those Instances where land under single ownership is divided into two or more land use categories by the adoption or revision of the Future Land Use Map, the allowable density under this Plan will be the sum of the allowable densities for each land use category for each portion of the land. This density can be allocated across the property provided that:*

1. *The Planned Development zoning is utilized; and*
2. *No density is allocated to lands designated as Non-Urban or Environmentally Critical that would cause the density to exceed that allowed on such areas; and*
3. *The land ~~is was~~ under single ownership or unified control at the time the Planned Development rezoning is adopted or amended ~~this policy was adopted~~ and is contiguous; in situations where land under single ownership or unified control is divided by roadways, railroads, streams (including secondary riparian systems and streams but excluding primary riparian systems and major flow ways such as the Caloosahatchee River and Six Mile Cypress Slough), or other similar barriers, the land will be deemed contiguous for purposes of this policy; and*
4. *The resultant Planned Development affords further protection to environmentally sensitive lands if they exist on the property. In the event uplands are preserved within the Planned Development and are designated as Upland Conservation Lands on the future land use map, density may be relocated from the Upland Conservation Lands to contiguous developable uplands at the same underlying density permitted for the developable uplands.*

The applicant provides the following narrative concerning the proposed text amendment:

“An amendment to Policy 5.1.10 is proposed to allow density from the future land use categories within the project to be summed and allocated within other areas of the River Hall Community. The amendment will also allow density from lands placed in the Conservation Uplands Category and under a conservation easement during the required planned development to be transfer to contiguous uplands at the requested density of the proposed FLU Amendment.”

Staff sees the merit of the proposed text amendment. The premise of the amendment is consistent with the recent Lee Plan wetland density amendment. Staff believes it would be a good policy to allow a property owner to utilize density from lands voluntarily placed in the Conservation Lands category. This is consistent with current clustering provisions of the plan. To not allow this mechanism is a real incentive to not utilize the Conservation Lands category. An amendment that would provide a property owner the flexibility to propose Conservation Lands and cluster density from these lands could be a benefit to a number of other properties within the county, not just the subject property. There is no real reason to limit this mechanism to just uplands within the Conservation Lands category.

Staff has several concerns with the proposed text amendment. The property includes Suburban designated property that is not included in the amendment or rezoning area. The applicant narrative indicates that density will be utilized from these Suburban areas, even though those property owners have not joined in with these requests. There is the question of who really owns or is entitled to the unused Suburban density. The amendment does not depend on this density, but rather the density from the Conservation Lands.

The amendment to the date of unified control will broaden the application of Policy 5.1.10. The application does not attempt to analyze the potential affect on other properties as a result of this proposed amendment. Staff does not know the affect this amendment will have on additional properties. Staff finds that a simpler text amendment could be devised that could achieve the applicant's goals as well as being a benefit to other properties.

In the event that the plan amendment is transmitted, staff believes that the following language would be better in achieving the applicant's desire to cluster density from the proposed Conservation Lands, in a similar manner that has already occurred on the project site with the previous zoning approvals. This language could be utilized by other properties outside of the Costal High Hazard area in the future. This is a way to incentivize the addition of Conservation Lands without public funding. Staff's proposed language is as follows:

POLICY 5.1.11: Property that is outside of the Coastal High Hazard Area, may receive density from lands that are designated to the Conservation Lands future land use category through a privately initiated amendment. The use of any density that is generated from this policy must be approved through the Planned Development zoning process and be used on the same property as the privately initiated amendment. Density from the Conservation Lands will be calculated at the same rate as the uplands immediately adjacent to the Conservation Lands within the planned development. The units from the Conservation Lands must be clustered on non-Conservation Lands within the planned development. A conservation easement, dedicated to the county, must be granted by the owner of the conservation lands. This easement must assign maintenance responsibility to a property owners' association, community development district, or similar acceptable entity. The conservation easement must be recorded prior to issuance of a development permit authorizing construction of the additional dwelling units generated from the Conservation Lands.

Table 1(b) & Map 16

The applicant has proposed an amendment to Table 1(b). Staff has reviewed this request and finds that this proposal is inappropriate. Staff is recommending an alternative amendment to Table 1(b) if the Board of County Commissioners desires to transmit the proposed amendment. This is further explained below.

The original allocations were a result of the 1989 Settlement Agreement with the Department of Community Affairs (DCA). This agreement required the County to amend the Future Land Use Map Series by designating the proposed distribution, extend, and location of the generalized land uses. The allocations were designed to reconcile the population accommodation capacity of the Future Land Use Map (buildout estimated to be 70 years in 1989) with the 20-year time frame in the text of the element. Map 16 and Table 1(b) provide the allocations and geographic applicability of the allocations. Map 16 identifies 22 Planning Communities. The subject property is within Planning Community #4, Fort Myers Shores. Table 1(b) uses the Planning Communities to allocate the number of acres that may be developed for residential, commercial or industrial uses within each future land use category before the year 2030. Lee Plan Policy 1.7.6 provides further guidance concerning the Planning Communities Map and Acreage Allocation Table (Table 1(b) and Map 16).

Currently the subject property has 1,064 acres of land within the Rural future land use category and 223 acres of land within the Wetlands future land use category. The applicant is proposing an amendment to the Future Land Use Map to add 153 acres of Conservation Lands Wetlands, 264 acres of Conservation Lands Uplands, and 870 acres of Sub-Outlying Suburban. The applicant is also proposing an amendment to Table 1(b) so that sufficient acreage will be available to allow the build-out of the River Hall development should the proposed changes to the Future Land Use Map be adopted. The applicant originally proposed changes to Table 1(b) are as follows:

Table 1(b)
Fort Myers Shores Planning Community

Future Land Use Category	Remaining	Proposed
Sub-Outlying Suburban	<u>367</u>	<u>851</u>
Rural	<u>1,064</u>	<u>0</u>
Conservation Lands Uplands	<u>0</u>	<u>274</u>
Conservation Lands Wetlands	<u>0</u>	<u>153</u>

This proposed change would result in no Rural acres remaining in the accommodation table. Staff notes that there are several large vacant parcels that have potential to seek residential development in the planning horizon. Amending the Rural allocation to zero as proposed by the applicant would preclude these vacant parcels from being developed within the planning horizon as specified by Policy 1.7.6. This could potentially even affect areas that are to remain in the Rural category within the River Hall development. Staff is not comfortable with this aspect of the proposed amendment. Staff also notes that no allocation is needed for the Conservation Lands.

The applicant simply allocated the lands within the amendment area between the Sub-Outlying Suburban and Conservation categories, and did not account for the difference in the existing and proposed categories' densities. Staff notes that the Sub-Outlying Suburban category accommodates twice the amount of development as the Rural category. This proposed amendment will increase the Map and allocation table population accommodation.

Upon further discussion with the applicant's representatives, it was determined that the project would need 486 acres of net residential acres at buildout within the Sub-Outlying Suburban category. If the amendment is transmitted, staff proposes that the allocation acreages in Table 1(b) be amended as follows:

TABLE 1(b)
Year 2030 Allocations

		Lee County Totals		Fort Myers Shores	
		Existing	Proposed	Existing	Proposed
Future Land Use Classification					
Residential By Future Land Use Category	Intensive Development	1,367	1,352	20	5
	Central Urban	14,787	14,787	226	225
	Urban Community	18,425	18,425	637	637
	Suburban	16,623	16,623	1,810	1,810
	Outlying Suburban	4,105	4,105	40	40
	Sub-Outlying Suburban	1,548	1,728	367	547
	Industrial Development	79	79	0	0
	Public Facilities	1	1	0	0
	University Community	850	850	0	0
	Destination Resort Mixed Use Water Dependent	8	8	0	0
	Burnt Store Marina Village	4	4	0	0
	Industrial Interchange	0	0	0	0
	General Interchange	42	42	0	0
	General/Commercial Interchange	0	0	0	0
	Industrial/Commercial Interchange	0	0	0	0
	University Village Interchange	0	0	0	0
	New Community	900	900	0	0
	Airport	0	0	0	0
	Tradeport	9	9	0	0
	Rural	8,313	8,313	1,400	1,400
	Rural Community Preserve	3,100	3,100	0	0
	Coastal Rural	1,300	1,300	0	0
	Outer Islands	202	202	1	1
	Open Lands	2,805	2,805	0	0
	Density Reduction/Groundwater Resource	6,905	6,905	0	0
	Conservation Lands Uplands	0	0	0	0
	Wetlands	0	0	0	0
	Conservation Lands Wetlands	0	0	0	0
Total Residential		81,373	81,538	4,500	4,665
Commercial		12,793	12,793	400	400
Industrial		13,801	13,801	400	400
Non Regulatory Allocations					
Public		82,252	82,252	2,000	2,000
Active Agriculture		17,027	17,027	550	550
Passive Agriculture		45,859	45,859	2,500	2,500
Conservation (wetlands)		81,948	81,948	1,142	1,142
Vacant		22,422	21,957	226	61
Total		357,175	357,175	11,718	11,718
Population Distribution*		495,000	495,000	30,861	30,861

* Population for Unincorporated Area of Lee County

TRANSPORTATION/TRAFFIC CIRCULATION IMPACTS

The subject property has access to Palm Beach Blvd. (S.R.80) Via River Hall Parkway. This serves as the primary access point for the development. Zoning conditions require that a second, gated access will be built to the south, connecting the River Hall development to Lehigh Acres once 1,598 residential units have been constructed. There are also proposed emergency access points to mostly vacant residential developments to the east.

The Lee County Department of Transportation reviewed the proposed increase in development and provides the following:

We accept the applicant's analysis that the following roadway segments will operate at an unacceptable LOS with and without this project in the study area: Buckingham Road from Gunnery Road to SR 80, SR 31 from SR 80 to North River Road, and SR 80 from SR 31 to Tropic Avenue.

This project is currently served by River Hall Parkway, the main entrance road from SR 80. The second access is anticipated to be Ruth Avenue in Lehigh Acres. The Lee Tran Transit Development Plan and Vision Plan do not identify public transit routes (existing and future) serving the project. The closest public transit facility is the existing service on SR 80 ending at Buckingham Rd.

There are paved shoulders on SR 80 in front of this project. Lee Plan Map 3D-1, the Unincorporated Lee County Bikeways/Walkways Facility Plan, shows future sidewalk, shared use path on SR 80 in front of the project in the future.

Staff notes that the applicant has committed, through the draft development agreement (Attachment 6), to permit and construct the sidewalk/share use path along S.R. 80, a facility identified in the Unincorporated Lee County Bikeways/Walkways Facility Plan. The applicant has also committed through the draft development agreement to fund the construction of a traffic signal at the intersection of S.R. 80 and River Hall Parkway. The Lee County DOT memo is attached to this staff report as Attachment 4.

SOILS

The applicant has provided a description of the soils that are found on site. For a detailed description please see the application materials.

ENVIRONMENTAL CONSIDERATIONS

Lee County Division of Environmental Sciences provided a staff report to the Lee County Planning Division on June 5, 2013. Environmental Sciences staff finds that the CPA application and corresponding RPD amendment application demonstrate that there are no proposed impacts to the boundaries of the existing 465.2 acres of upland and wetland preserves that were required during the currently approved MCP for the River Hall development. While no impacts are proposed to the existing 465.2 acres of preserves, Environmental Sciences staff finds that the proposed Comprehensive Plan amendment "does not propose any additional protection of

preserved habitat or protection of listed species then the current existing zoning approvals and conservation easements. Environmental Sciences staff is also concerned that the amendment will allow the applicant to add 1,000 residential units to areas that are adjacent to documented gopher tortoise, burrowing owl, American Alligator, Florida Sandhill Crane, listed wading birds and Florida Scrub Jays; and areas that have suitable habitat for the Florida Panther and Black Bear. Their concern is the increase in potential for negative human/wildlife interactions.

The full report is attached to this staff report as Attachment 2.

NATURAL RESOURCES

Lee County Division of Natural Resources provided written comments to the Lee County Planning Division in a memorandum dated August 15th. Staff had identified that a groundwater monitoring program for the Sandstone Aquifer was not carried forward in a recent renewal of a South Florida Water Management District (SFWMD) Consumptive Use Permit. The applicant has agreed, through the proposed development agreement to reinstate the groundwater level monitoring program of the Sandstone aquifer and share the collected data with the SFWMD and Lee County. Lee County Staff has coordinated with the staff of the SFWMD, and the District is amenable to reinstatement of the ground water monitoring program. The Division of Natural Resources found that:

“given the above concern is addressed in the River Hall Development agreement, the Lee County Division of Natural Resources finds that no significant impacts on present or future water resources should result from the proposed change to Amend the existing Residential Planned Development, RPD and Commercial Planned Development, CPD zoning to increase the number of residential dwelling units in the River Hall community by 1,000 and include additional recreational uses within the commercial portion of the community. The Division of Natural Resources staff recommends that the Board of County Commissioners make a formal finding that no significant impacts on present or future water resources.”

The complete Division of Natural Resources’ correspondence is attached to this Staff Report as Attachment 4.

FEMA FLOODWAY ISSUE

County records show that the subject site is not located within a FEMA identified floodway.

HISTORIC RESOURCES

Portions of this site are within the level 2 sensitivity areas for archeological and historic resources.

SCHOOL IMPACTS

The Lee County School District provided correspondences to the Lee County Division of Planning dated August 31, 2013 and June 3, 2013. The August 31st memo states that:

“This development is approved and consists of 1,999 single family units. This request is to add an additional 1,000 single family units. With regard to the inter-local agreement

for school concurrency the generation rates are created from the type of dwelling unit and further broken down by grade level.

For single family the generation rate is .299 and further broken down into the following, .150 for elementary, .072 for middle and .077 for high. A total of 299 school-aged children would be generated and utilized for the purpose of determining sufficient capacity to serve the development. Currently within the School District, there are sufficient seats available to serve this need.”

The June 3rd memo states:

“The District has already responded in reference to capacity and these comments remain the same.

There has been discussion in reference to road access to the south of this development through Lehigh Acres. The District would be in support of this access as it would reduce the amount of time students spend on the bus as well as save the District fuel expense.”

SOLID WASTE

The Lee County Solid Waste Division provided correspondence to the applicant on August 29, 2012 stating that they are capable of providing solid waste collection service for the additional 1,000 residents that would be allowed for by the proposed Lee Plan Amendment.

MASS TRANSIT

Lee County Transit provided the applicant a letter dated October 17, 2012 stating the following:

“1) Currently, LeeTran does not provide service to Hawk's Haven (proposed River Hall) as it lies outside of the ½ mile transit service buffer. The closest transit route to the site is Route 100.

2) Currently, only a small area of the proposed River Hall RDP, in the northwest section of the development, is eligible for ADA service through LeeTran. The remainder of the development lies outside of the ½ mile ADA transit service buffer.

3) The FY2012-2021 Transit Development Plan does not include the expansion of transit services beyond their current service area, for the Route 100. This also means that there are no plans to expand ADA services in this area.”

In an e-mail dated October 18, 2012 to Lee County Planning staff, the following comments were also provided:

“Changing the land-use designation from rural to a sub-urban land-use category could imply a need for services that are either found in urban setting or feed urban settings. In the case of fixed route mass transit or the transportation of ADA riders through the

LeeTran Passport Service, I did not find sufficient response to determine how an increase in demand for these services would be funded. As was stated above, there are no plans for expanding the service in this area which would create another potential unfunded need for transit services within the horizon of the 2012-2021 Transit Development Plan. Additionally, a development of this size also requires an expansion of other public uses ranging from parks/open spaces to additional demands on schools. Both could create new demands for transit services beyond the existing service boundaries. These potential additional needs and expansion of services will only be met by an increase in funding or a decrease in systemwide transit service.

I submit the following Lee Plan Policies and Objectives as ones needing to be addressed as a part of the Comprehensive Plan Amendment 2012-00001.

Policy 43.1.4, Policy 43.1.6, Policy 43.1.7, Policy 43.1.8, Objective 43.2, Policy 43.2.1, Policy 43.3.2, Policy 43.4.2 and Policy 43.4.3.”

POLICE

The Lee County Sheriff’s Office provided a letter to the applicant dated on November 28, 2012 stating that the proposed Lee Plan amendment “would not affect the ability of the Lee County Sheriff’s Office to provide core levels of service at this time. We will provide law enforcement services primarily from our Fort Myers district office.”

FIRE

The Fort Myers Shores Fire and Rescue District provided correspondence stamped Received November 28, 2012 to the applicant stating that “they could provide adequate service to the subject site with the proposed future land use category.”

UTILITIES

Lee County Utilities provided the following correspondence to the applicant on November 28, 2012:

Potable water and sanitary sewer lines are in operation adjacent to the property mentioned above. However, in order to provide service to the subject parcels, developer funded system enhancements such as line extensions will be required.

Your firm has indicated that this project will consist of 1,000 single family residential units with an estimated flow demand of approximately 250,000 gallons per day. Lee County Utilities presently has sufficient capacity to provide potable water and sanitary sewer service as estimated above.

Availability of potable water and sanitary sewer service is contingent upon final acceptance of the infrastructure to be constructed by the developer. Upon completion and final acceptance of this project, potable water service will be provided through our Olga Water treatment Plant.

Sanitary sewer service will be provided by the City of Fort Myers North Wastewater Plant. The Lee County Utilities' Design Manual requires the project engineer to perform hydraulic computations to determine what impact this project will have on our existing system.

Prior to beginning design work on this project, please schedule a meeting with Thom Osterhout to determine the best point of connection and discuss requirements for construction.

This letter is not a commitment to serve, but only as to the availability of service. Lee County Utilities will commit to serve only upon receipt of all appropriate connection fees, a signed request for service and/or an executed service agreement, and the approval of all State and local regulatory agencies.

B. CONCLUSIONS

Staff has identified advantages and disadvantages in transmitting this proposed amendment to the Lee Plan. Factors leading to a recommendation to transmit this amendment include:

- The current character of the subject site is that of a suburban gated golf course subdivision. The proposed amendment will not substantially alter this character.
- The concurrent rezoning request would limit the proposed density to approximately 1.5 dwelling units per acre, an increase of .5 dwelling units per acre.
- The additional units will not impact required preserve areas or open space, but will be constructed in areas already approved and cleared for development;
- The developer has addressed community needs that have been identified within the Caloosahatchee Shores Community Plan.

Concerning transportation impacts, Lee County Department of Transportation staff agrees with the applicant's analysis that several surrounding roadway links will operate at an unacceptable LOS with and without this project. In addition, several members of the public have expressed concerns about traffic at the intersection of River Hall Parkway and S.R 80 and the lack of a traffic signal. Through the proposed draft development agreement (Attachment 6) the applicant is committing to fund the construction of a traffic signal at the intersection of State Road 80 and River Hall Parkway when warrants are met.

After weighing all of these factors, and the other issues that are discussed in the staff report, staff is recommending that the Board of County Commissioners transmit the proposed amendment. Staff also recommends that the modifications to Table 1(b) and text as modified by staff in the staff report be transmitted, not the applicant proposed language and acreage figures.

PART III - LOCAL PLANNING AGENCY REVIEW AND RECOMMENDATION

DATE OF PUBLIC HEARING: August 26, 2013

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief summary of the proposed Lee Plan amendment and staff recommendation. The staff summary explained that there is a concurrent zoning case (DCI2013-00003), and the advantages and disadvantages of the proposed amendment. The LPA did not ask any questions of staff. The applicant and their representatives provided a detailed description of the proposed Lee Plan amendments and the public benefits that would result if the proposal were adopted and implemented. They also gave a history of the project and the economics behind their request. The LPA asked several questions during the applicant's presentation, which were addressed by the applicant.

Following the applicant's presentation one member of the LPA asked questions about the meaning of the phrase "overriding public need," and stated that he did not agree with the staff's or applicant's interpretation. Another member of the LPA pointed out that the staff report stated that there was no demonstrated need for additional units in the areas around River Hall. It was also pointed out that the finding of overriding public need requirement found in Policy 25.1.5 was incorporated into the plan based on the community's reaction to the two previous attempts to increase density on the River Hall site. Another LPA member asked how the residents within the River Hall Community were notified, and what their reactions were. The applicant responded that they held an onsite community meeting.

Fifteen members of the public, representing 21 people, addressed the LPA concerning the proposed amendment. All of these members were opposed to the proposed Lee Plan amendments that would increase density on the River Hall property. Concerns expressed by the public, in no particular order, included: reliability of the developer; increased crime; increased traffic; increased environmental impacts from more automobiles; overriding public need not met; negative affects on neighborhood character; setting a bad precedent for this and other community plans; and, sets a bad precedent for rural lands in other areas of Lee County.

Staff of Lee County Parks & Recreation and the Florida Fish and Wildlife Conservation Commission expressed concern about the connection of a proposed multi-use trail along the northern boundary of River Hall to the Hickey's Creek Mitigation Park, located immediately to the project's east. The applicant replied by stating the proposed trail could be modified to address these and other concerns.

One member of the LPA noted that other communities within Lee County, including the areas surrounding River Hall were actively selling homes, but that River Hall was not because it was not attempting to. Therefore he did not see that economic viability was an issue. Another member of the LPA asked for clarification about what type of motion was needed for this case. Staff and the County Attorney's Office replied that the LPA needed

to make a recommendation either to transmit or not to transmit. One member of the LPA expressed concern that staff's recommendation was not consistent with the Caloosahatchee Shores Community Plan or the New Horizon 2035 Planning efforts.

Another member stated that financial concerns should not be a basis for approval of a proposed plan amendment. This member made a motion to recommend the Board of County Commissioners not transmit the proposed Lee Plan amendment. Members of the LPA wanted to be assured that the Board of County Commissioners were aware of the LPA's discussion and reasoning for the motion. The motion was amended to include the LPA's findings that there is no overriding public necessity for the proposed amendment and that the proposed amendment would substantially alter the character of the rural subdivision.

The motion passed 6 to 0 (one member of the LPA left the meeting early).

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA recommends that the Lee County Board of County Commissioners *not transmit* the proposed Lee Plan amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA did not accept the basis and recommended findings of fact as advanced by staff.

- The LPA found that there was not an "overriding public necessity" to increase the density.
- The LPA found that the proposed amendment would substantially alter the character of the rural subdivision.

C. VOTE:

NOEL ANDRESS	AYE
STEVE BRODKIN	AYE
WAYNE DALTRY	AYE
JIM GREEN	AYE
MITCH HUTCHCRAFT	ABSENT
ANN PIERCE	AYE
ROGER STRELOW	AYE

D. ACTIONS SUBSEQUENT TO THE LPA MEETING

Following the LPA meeting Lee County Planning staff met with the staff of Parks and Recreation. At this meeting Parks and Recreation staff explained their concerns with the proposed trail and trailhead park, and the impacts that these could have on the Hickey's Creek Mitigation Park. Parks and Recreation has provided a memorandum stating that they support the trail and the trailhead park if the trail stops on the western side of the East County Water Control District (ECWCD) canal and continues south along the canal. Parks and Recreation also recommended that the developers work with the ECWCD to accommodate the proposed trail along the canal. The memorandum also provides clarification that Lee County Parks and Recreation could not commit funds toward the proposed trail and trailhead park. The Parks and Recreation memo is attached as Attachment 9.

The applicant has been made aware of the concerns of Parks and Recreation and has been working with ECWCD for the construction of the trail along the eastern boundary of River Hall. This alignment would be as recommended by Lee County Parks and Recreation to avoid unintended impacts to the Hickey's Creek Mitigation Park. The applicant has also modified the DRAFT developer's agreement to state that the applicant is agreeable to continuing the proposed multi-use trail south along the ECWCD canal. The Draft developer's agreement has also been amended to remove a reference to additional funding for the proposed trailhead park being funded by Lee County. The developer's agreement language was amended as a result of other staff comments as well. The proposed developer's agreement can continue to be amended up to the point the Lee Plan amendment is adopted, if necessary and if desired by the Board to address any additional issues. The draft developer's agreement is attached as Attachment 6.

EMS

Lee County EMS recently submitted a review of the proposed Lee Plan amendment. In the memo EMS staff state that *"As build out and full occupation of River Hall is achieved, LCEMS will have difficulty of achieving the goal of 8:59[response time]."* The Lee County EMS staff memo is attached as Attachment 10.

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

DATE OF PUBLIC HEARING: September 25, 2013

A. BOARD REVIEW

The County Attorney's Office opened the meeting by finding that it had been properly noticed. The County Attorney's Office also addressed a request that the applicant had made in writing to the Commissioners prior to the Transmittal Hearing to remand the case to the Local Planning Agency (see attached). The County Attorney's office provided guidance to the Board about how to address this request. The Board elected to address the applicant's request after it had heard the proposed Lee Plan amendment.

Staff provided a brief summary of the proposed amendment. The staff summary explained that there is a concurrent zoning case (DCI2013-00003), the main issues of the proposed amendment, and the LPA findings and recommendation to not transmit the proposed amendment. The Board did not ask any questions of staff. The applicant and their representatives provided a detailed description of the proposed Lee Plan amendments and the public benefits that would result if the proposal were adopted and implemented. The applicant's representatives also gave a history of the project and explained how the current developer of River Hall had taken actions to stabilize the development. The Board asked several questions following the applicant's presentation, which were addressed by the applicant.

Thirty-four members of the public addressed the Board concerning the proposed amendment. Of these, twenty-four were opposed, and ten were in favor of the proposed amendment that would increase density on the River Hall property. Concerns expressed by the public, in no particular order, included: inconsistency with community plans; the precedent this would set for the "overriding public necessity" standard; safety concerns from increased traffic; increased environmental impacts from more automobiles and people; there was not an overriding public necessity; and, negative affects on neighborhood character. Member of the public that were in favor of the proposed amendment stated: that the proposed density seemed reasonable; this was a more efficient use of land already proposed for development; improvements would make community better for families; efficient use of existing infrastructure; and, that all changes would be internal to River Hall.

Following the public input the applicant's representative clarified questions raised by the public. The applicant's representatives clarified that if approved the developer would provide funds for the signal. The applicant's representatives also reiterated that the proposed amendment was not a bailout and was based on sound planning principles.

Following the applicant's representatives summary the Board discussed the proposed amendment. The Board discussed that the proposed case was similar to previous requests that were denied without the Lee Plan requirement for an "overriding public necessity." One member raised traffic as a concern because the additional units would add more

traffic to a transportation network that was already projected to fail. One member stated that he did not agree with staff that the applicant had demonstrated that there was an overriding public necessity for the additional units. Another member expressed concern that there was not a definition of overriding public necessity and wanted the case to go back to staff to provide a definition before a vote was made. One member asked for clarification about how a vote would affect other community plans.

One member of the Board made a motion to not transmit the proposed amendment. The motion was seconded. Two members voted in favor of the motion, and two members voted against the motion. That motion failed for lack of a majority on a 2 to 2 vote. Another motion was made to remand the case to the LPA. That motion also failed for lack of a majority on a 2 to 2 vote.

Administrative Code 13-6 states that *“To be transmitted to the SLPA [State Land Planning Agency] the proposed amendment must receive an affirmative vote of not less than a majority of the members of the Board present at the hearing.”* The proposed amendment did not receive an affirmative vote of a majority of the Commissioners present; therefore the Board did not transmit the proposed amendment.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The Lee County Board of County Commissioners did ***not transmit*** the proposed Lee Plan amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board of County Commissioners did not accept the basis and recommended findings of fact as advanced by staff.

C. VOTE:

1. Motion Not to Transmit:

LARRY KIKER	NAY
FRANK MANN	AYE
JOHN MANNING	AYE
CECIL L PENDERGRASS	NAY
VACANT	

2. Motion to Remand to LPA:

LARRY KIKER

AYE

FRANK MANN

NAY

JOHN MANNING

NAY

CECIL L PENDERGRASS

AYE

VACANT
