

DIVISION OF ADMINISTRATIVE HEARINGS, STATE OF FLORIDA

ROGER THORNBERRY
GEORGETTE LUNDQUIST,
STEVEN BRODKIN,
RUBY DANIELS,
ROSALIE PRESTARRI,
JAMES GIEDMAN,
Petitioners

v.

DOAH Case No. _____
DEO FILE NO. CPA 14-7ESR
Lee County CPA 2012-00001

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

PETITION FOR FORMAL ADMINISTRATIVE HEARING.

1. Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 is not in compliance with Florida Statutes Chapter 163, Part II (Community Planning Act) because it does not conform to the standards contained in the duly adopted Comprehensive Plan and is internally inconsistent with the Comprehensive Plan, including:

Calooshatchee Shores 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.** (Ordinance No. 09-06).”

Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 is an amendment to the rural lands category but there was no finding of overriding public necessity made by three members of the Board of County Commissioners. Therefore, the plan amendment is internally inconsistent with the adopted Comprehensive Plan (“Lee Plan”) and fails to meet the meaningful and predictable standards contained in Policy 21.1.5.

2. Petitioners hereby file this petition for a formal administrative hearing and request to intervene or consolidate this petition with in any other administrative hearings filed by any other party(ies) with regard to Lee County Comprehensive Plan Amendment No. CPA2012-00001 River Hall.

3. Petitioners are citizens of LEE COUNTY who provided written or oral comments on the plan amendment between transmittal and adoption and have statutory standing as an “affected person” under Florida Statutes §163.3184(1)(a). Petitioners for this proceeding are as follows:

a. ROGER THORNBERRY owns real property located proximate to the subject development at 3087 Sagittaria Lane within the same River Hall development, near and proximate to the lands that is the subject of the plan amendment, shares internal development roads and infrastructure with the land that is the subject of the plan amendment, and submitted oral and/or written comments to Lee County during or between the plan amendment transmittal and adoption hearings on Lee County Comprehensive Plan Amendment No. CPA2012-0001 River Hall.

b. GEORGETTE LUNDQUIST seeks this hearing as an individual citizen of LEE County, who resides in LEE County, owns real property located at 17005 Sunny Lakes Court, Alva, Florida 33920 within the same River Hall development, near and proximate to the lands that is the subject of the plan amendment, shares internal development roads and infrastructure with the land that is the subject of the plan amendment, and submitted oral and/or written comments to Lee County during or between the plan amendment transmittal and adoption hearings on Lee County Comprehensive Plan Amendment No. CPA2012-0001 River Hall.

c. STEVEN BRODKIN seeks this hearing as an individual citizen of LEE County, who resides in LEE County at 17720 Durance Road, Fort Myers, Florida 33917 and submitted

oral and/or written comments to Lee County during or between the plan amendment transmittal and adoption hearings on Lee County Comprehensive Plan Amendment No. CPA2012-0001 River Hall, and is interested and involved in growth management issues affecting Lee County as President of the Concerned Citizens of Bayshore, Inc. and as a member of the East Lee County Council Inc. (ELCC) member.

d. RUBY DANIELS seeks this hearing as an individual citizen of LEE County, who resides in LEE County at 18100 Persimmon Ridge Road, Alva, Florida 33920 and submitted oral and/or written comments to Lee County during or between the plan amendment transmittal and adoption hearings on Lee County Comprehensive Plan Amendment No. CPA2012-0001 River Hall, and is interested and involved in growth management issues affecting Lee County as President of Alva, Inc. and as an ELCC Inc. member.

e. ROSALIE PRESTARRI seeks this hearing as an individual citizen of LEE County, who resides in LEE County at 2029 Clark Ave., Fort Myers, Florida 33905 and submitted oral and/or written comments to Lee County during or between the plan amendment transmittal and adoption hearings on Lee County Comprehensive Plan Amendment No. CPA2012-0001 River Hall, and is interested and involved in growth management issues affecting Lee County as a member of the Olga Community Group, Caloosahatchee Shores Community Planning panel and ELCC, Inc.

f. JAMES GIEDERMAN seeks this hearing as an individual citizen of LEE County, who resides in LEE County at 2261 Queen Anne Drive, Fort Myers, Florida 33905 and submitted oral and/or written comments to Lee County during or between the plan amendment transmittal and adoption hearings on Lee County Comprehensive Plan Amendment No. CPA2012-0001 River Hall, and is interested and involved in growth management issues affecting Lee County as a member of the Olga Community Group, Caloosahatchee Shores Community

Planning panel and ELCC, Inc.

4. Petitioners are represented by and can be contacted and served with pleadings in this matter care of:

Ralf Brookes Attorney, 1217 E Cape Coral Parkway #107, Cape Coral Florida 33904
(239) 910-5464 fax (866) 341-6086 Ralf@RalfBrookesAttorney.com and
RalfBrookes@gmail.com (Secondary Email Service)

5. The affected agency's name and address is: STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY, Caldwell Building, 107 E. Madison Street,
Tallahassee, Florida 32399. The DEO file for the Lee County Proposed Comprehensive Plan
Amendment is No. 14-7ESR.

6. The affected local government or "applicant" in this proceeding is Lee
County, 2120 Main Street, Fort Myers, Florida, 33901 a local government that has the duty to
adopt comprehensive plan amendments that comply with the Act pursuant to the requirements
of Chapter 163, Part II, Florida Statutes (F.S.) including but not limited to Section 163.3167,
Florida Statutes.

7. The Lee County Board of County Commissioners approved transmittal of the
amendment to the State at a public hearing on or about October 22, 2014, and adoption of the
amendment on or about June 3, 2015. Petitioners attended and provided comments at this
hearing.

8. Lee County Board of County Commissioners adopted the amendment at a public
hearing on June 3, 2015. Petitioners received notice, attended, and provided comments before
or during this hearing.

9. Pursuant to Section 163.3177(1), Florida Statutes, the comprehensive plan shall contain sections generally provided as goals, objectives and policies to implement the comprehensive plan in a consistent manner, and that the plan shall establish meaningful and predictable standards for the use and development of land. See also, Section 163.3161(6), Florida Statutes.

10. Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 does not conform to, and creates internal inconsistencies with, the Future Land Use Element (FLUE) of the Lee Plan.

11. Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 fails to follow the meaningful and predictable standards for the use and development of land which exist in the Lee Plan pursuant to Section 163.3177(1).

12. Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 is not “in compliance” as that term is defined in Section 163.3184(1)(b).

13. Specifically, Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 is internally inconsistent with the following Goals, Objectives and Policies of the duly adopted Lee Plan:

a. Goal 21:Caloosahatchee Shores states that the goal of the Caloosahatchee Shores planning area is to maintain a more rural identity for the neighborhoods east of I-75. River Hall is in the Caloosahatchee Shores planning area located east of I-75.

b. 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.** (Added by Ordinance No. 09-06).

14. Policy 21.1.5 sets forth meaningful and predictable standards for the development of land in the Caloosahatchee Shores planning Area and Petitioners and residents have relied on this language that is contained within the duly adopted Lee Plan and Policy 21.1.5 has not been amended.

15. The language in Policy 21.1.5 is express, plain and clear and states that there be no change to land categorized as rural on the future land use map after May 17, 2009 unless “three members of the Board of County Commissioners” make “a finding of overriding public necessity.” Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 is an amendment to the rural lands category but there was no finding of overriding public necessity made by three members of the Board of County Commissioners.

16. A fundamental tenant of the law is that “whatever the consequences, we must accept the plain meaning of plain words.” Justice Oliver Wendell Holmes, United States v. Brown, 206 U.S. 240, 244 (1907). Florida specifically recognizes that one of the most fundamental tenants of statutory construction requires that statutory language be given its plain and ordinary meaning unless the words are defined in the statute or by the clear intent of the legislature. See WFTV, Inc. v. Wilken, 675 So.2d 674, 677 (Fla. App. 4 District 1996). Florida also requires the Courts apply the same rules of construction to a comprehensive plan that they would to other Statutes, and that a fundamental rule of statutory interpretation is that courts should avoid readings that would render part of a statute meaningless. See 1000 Friends of Florida, Inc. and Sierra Club, Inc. v Palm Beach County and Bergeron Sand & Rock Mine Aggregates, Inc., 69 So. 3d 1123, 1127 (Fla. App. 4 District 2011).

17. The request for Comprehensive Plan Amendment 14-7ESR/Lee County CPA2012-00001 is to remove 585.6 acres of land from the **rural category** in the Caloosahatchee Shores planning area and place that land in the **sub-outlying suburban category**. The subject plan amendment removes land from the rural lands category, but did not obtain a finding of overriding public necessity by three members of the Board of County Commissioners and is therefore internally inconsistent with Policy 21.1.5 of the Comprehensive Plan Future Land Use Element.

18. Further, this request was initiated in 2012 and adopted on June 3, 2015. Therefore, this request is after May 17, 2009 and must be consistent with the meaningful and predictable standards set forth in Policy 21.1.5.

19. A finding of “overriding public necessity” was not made by three members of the Board of County Commissioners.

20. Without this required finding of overriding public necessity by three members of the Board of County Commissioners, the subject land use amendment to the Rural lands category in the Caloosahatchee Shores planning area is internally inconsistent with the Lee Plan and fails to meet the meaningful and predictable standards contained in Policy 21.1.5.

21. The plain language of Policy 21.1.5 is clear and express. Policy 21.1.5 was known as CPA2007-01 and adopted by Ordinance No. 2009-06. Policy 21.1.5 was adopted by Lee County and was approved by the state land planning agency with no objections to the language in any of the agency Objections, Recommendations and Comments (ORC report dated January 16, 2009).

22. The Lee County staff report prepared on June 13, 2014 dated October 8, 2014 includes the following historical information for CPA 2007-00001:

a. Following the second private request¹ a publicly 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.

b. 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 re-designate rural lands to a more intense land use category.

23. A Lee County staff report prepared on June 13, 2014, dated October 8, 2014 includes the following findings of fact:

a. The amendment would remove approximately 27 percent of the Rural lands category from the total Rural designation in the Fort Myers Shores Planning Community.

b. The term "overriding public necessity" was intended to have a strict meaning designed to protect the rural character of the community from amendments that will intensify development.

c. Staff's analysis explained an "overriding public necessity" as: "An unavoidable or indispensable need of all the people of Caloosahatchee Shores that requires precedence over other considerations or interests."

¹ to change land from Rural to Sub-Outlying Suburban in the River Hall Development

d. The “overriding public necessity” requirement seeks an analysis of the need for the actual land use amendment that is being requested and not the need for public amenities offered.

24. The staff report for CPA 2007-01 prepared on November 20, 2007 dated February 25, 2009 adopting Policy 21.1.5, provides the following legislative history regarding Policy 21.1.5: The request is to amend the Future Land Use Element, Goal 21, to add a policy that provides that no land use map amendments to remaining rural lands category will be permitted unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

Specific Statutes.

Florida Statutes Chapter 163, Part II (Community Planning Act)

Florida Statute Section 163.3161

Florida Statute Section 163.3177

Florida Statutes Chapter 120 (Florida Administrative Procedures Act)

Relief Requested

Petitioners respectfully request:

- (a) formal hearing be conducted pursuant to Florida Statutes;
- (b) that the Administrative Law Judge issue a **Recommended Order** finding the challenged Amendments "**not in compliance**" as defined in Florida Statutes Chapter 163, Part II;
- (c) a **Final Order** be entered finding the plan amendments "**not in compliance**" and
- (d) such other relief be granted as may be fair and just including and any and all other relief appropriate under the circumstances.

/s/ Ralf Brookes Attorney

RALF BROOKES ATTORNEY
Florida Bar No. 0778362
Ralf Brookes Attorney
1217 E Cape Coral Parkway #107
Cape Coral, Florida 33904
Telephone (239) 910-5464
Facsimile (866) 341-6086
Ralf@RalfBrookesAttorney.com

CERTIFICATE OF FILING & SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed and served via fax on
July 1, 2015 to the following:

DIVISION OF ADMINISTRATIVE HEARINGS, STATE OF FLORIDA
Via fax (850) 921-6847 and email Claudia.Llado@doah.state.fl.us

DEPARTMENT OF ECONOMIC OPPORTUNITY, STATE OF FLORIDA
Via fax (850) 921-3223; fax (850) 921-3230

LEE COUNTY, FLORIDA
Lee County Attorney
Fax 239-485-2106
Email: rwesch@leegov.com

/s/ Ralf Brookes Attorney

RALF BROOKES ATTORNEY
Florida Bar No. 0778362
Ralf Brookes Attorney
1217 E Cape Coral Parkway #107
Cape Coral, Florida 33904
Telephone (239) 910-5464
Facsimile (866) 341-6086
Ralf@RalfBrookesAttorney.com