



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

March 10, 2017

Sent Via Email

John Manning, Chair  
Cecil Pendergrass, Vice Chair  
Larry Kiker  
Brian Hamman  
Frank Mann

Lee County Board of County Commissioners  
2120 Main St.  
Fort Myers, FL 33901

Dear Chair Manning and Lee County Commissioners:

On behalf of the Conservancy of Southwest Florida and our over 6,000 supporting families, we are submitting comments to the Board of County Commissioners opposing Comprehensive Plan Amendment 2014-08 which deletes the Overriding Public Necessity (OPN) requirement from four community plans. We ask you to not transmit this amendment to state agencies for review.

Lee County has set up a community planning framework in order "[t]o encourage and support both citizen and County initiated community planning efforts that address the unique community character of specific geographic areas in Lee County" Goal 24, Lee Plan. Lee Plan Objective 24.1 states: "Lee County will encourage and support citizen initiated community planning efforts for geographically small areas. Lee County may initiate community planning efforts for geographic areas that do not have an organized citizen initiative when it is determined that critical circumstances exist that can best be addressed by developing community plans". This means what Lee County is proposing in this amendment is in conflict with Objective 24.1.

The plain language of Objective 24.1 states that Lee County will initiate community planning efforts for areas that do not have organized citizen groups, which in effect, means that Lee County will not initiate community planning efforts for areas that do have organized citizen groups.

One rule of statutory construction is "expressio unius est exclusio alterius" or "to express or include one thing implies the exclusion of the other." Black's Law Dictionary (9th ed. 2009) *1000 Friends of Fla. v. Palm Beach Cnty.*, 69 So. 2d 1123, 1126 (Fla. 4th DCA 2011). This means Objective 24.1 restricts Lee County to initiating community planning efforts for areas without organized citizen



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groups, and that Lee County cannot initiate community planning efforts for areas with citizen groups. This action is a community planning effort for four areas with organized citizen groups.

The appropriate way to go about this action is to inform the four communities of Lee County's concerns, and to give each of the four community planning groups an opportunity to amend their community plan in a way that addresses the needs and desires of each community. It is inappropriate to dictate to four communities how to change their plans. Lee County can work with the community planning panels to help provide a level of specificity in the plans. However, ignoring the community planning panels and the community planning process is not the way to go about amending the Lee Plan in areas with organized citizen groups.

At the Local Planning Agency (LPA) Hearing on February 27, 2017, staff stated that there are adequate provisions in the Lee Plan to protect these rural communities, and that the OPN is not necessary. We disagree with Lee County's assessment, and we don't believe that Lee County should be able to make this determination for these four planning communities.

There was also talk about the River Hall case at the LPA Hearing. The River Hall case is immaterial to this action because no finding of OPN was made. The issue appealed in the River Hall Case is whether the Board of County Commissioners was required to make a finding of OPN; that case has nothing to do with what OPN means.

Lee County decided after adopting two Objectives and two Policies over eleven years,<sup>1</sup> which contained OPN, that OPN needed to be defined. The appropriate procedure should have been for Lee County, with its vast resources of legal and planning staff, to craft a definition and then work collaboratively with the four communities to fine tune it into something that all parties could accept. Instead Lee County met individually with each of the four communities and asked these citizens to craft a definition. Two years after a definition had been crafted by these citizens, Lee County decided the definition wasn't good enough. Rather than meet with the communities again, or craft their own definition, Lee County decided, seventeen years after it was first adopted into the comprehensive plan, that OPN should be eliminated from the comprehensive plan.

The four communities were not consulted about this decision, and were never given a chance to craft language for their own communities that did not include OPN. This is not right. This is not fair. You should not let this happen.

It is not just these four communities who should be concerned about this action. If Lee County is permitted to dictate what is included or excluded from a community plan, all community planning panels and citizens should be concerned. Today, Lee County is trying to dictate language about how and when the development can occur by removing the need for heightened scrutiny in rural areas

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<sup>1</sup> Objective 17.1 was adopted in 2000, amended in 2010; Objective 20.1 was adopted in 2003; Policy 21.1.5 was adopted in 2009; Policy 26.2.2 was adopted in 2011.

of Lee County. If Lee County is allowed to sidestep the community planning process, there is no limit to what Lee County could decide to do to any or all of the community plans.

We remind the citizens and decision makers in Lee County of *Allapattah Community vs. City of Miami*<sup>2</sup> which states that “the law will not and cannot approve...any governmental action adversely affecting the rights of other...based on no more than the fact that those who support [the action] have the power to work their will”. Lee County had an opportunity to refuse to adopt the subject Objectives and Policies now at issue. That time has passed. Lee County should not be able to circumvent their own rules and impose new language on these four communities that have active citizen planning groups.

We are requesting that you do not transmit this to the state agencies for review. This is a 2014 application. Meetings with the affected communities happened more than two years ago. There is no reason to fast track these changes by transmitting today. Please instruct your staff to go about this process the right way, following your own rules and respecting the community planning process. This means that you would instruct staff to meet with the impacted communities and work together to craft language that Lee County AND the communities are comfortable with. At the very minimum, these communities deserve the respect to at least have the language proposed for their community presented at a community meeting, and the chance to modify that language to fit their community vision. Community planning is not about what Lee County thinks is best for the 22 individual planning communities; community planning is giving citizens in each of the 22 planning areas a voice in crafting their vision of the future.

It's very simple. If you respect community plans and community planning, you will not transmit this amendment to the state agencies and will instruct staff to work with the four communities.

Thank you for your time and consideration of our issues and concerns. If you have any questions or need additional information, please feel free to contact me at 236-262-0304 x 252 or [juliannet@conservancy.org](mailto:juliannet@conservancy.org).

Sincerely,



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Senior Environmental Planning Specialist

Cc: Roger Desjarlais  
Michael Jacob  
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<sup>2</sup> 379 So.2d 387 (Fla. Dist. Ct. App. 1980)