

**Defining Overriding Public Necessity (OPN)  
Caloosahatchee Shores Community Meeting  
March 17, 2015**

<p><b>Meeting Synopsis</b></p>	<p>The Caloosahatchee Shores Community Meeting was the last of the four workshops held in the planning communities that have the term “Overriding Public Necessity” in their Lee Plan Objectives and Policies. The four communities reached consensus on a definition to be included in the Lee Plan Glossary.</p>
<p><b>Overriding Public Necessity (OPN) Definition</b>  (Agreed to by the Caloosahatchee Shores, Buckingham, Bayshore and Alva Communities)</p>	<p><b>“Overriding Public Necessity.</b> An unavoidable and essential need of the residents of the individual planning community as a whole, where the welfare of the individual planning community is regarded as superior to the interests of individuals, and when there is a conflict between them, the latter must give way. Increases in density to support services and/or infrastructure (e.g. schools, hospitals, fire and rescue services, water and sewer, etc.) do not qualify as an “Overriding Public Necessity.” The requirement applies to the overriding public necessity for the actual land use amendment being requested, not the need for amenities offered, and will be considered only for the actual footprint of the intended use. “</p>
	<ul style="list-style-type: none"> <li>• The Communities requested that a provision be added to the definition above to address density increases on properties that are adjacent to the individual planning community.</li> </ul>
<p><b>OPN Discussion:</b></p>	<ul style="list-style-type: none"> <li>• Ed Kimball discussed meeting with the Alva, Bayshore and Buckingham community leaders to agree on a definition for OPN. During the course of the workshop, the definition was refined. The changes are shown below in underline and strike-out format:</li> <li>• <b>“Overriding Public Necessity.</b> An unavoidable and essential need of the residents of the <u>individual planning</u> community as a whole, where the welfare of the <u>individual planning</u> community is regarded as superior to the interests of individuals, and when there is a conflict between them, the latter must give way. Increases in density to support services and/or infrastructure (e.g. schools, hospitals, <u>fire and rescue services, water and sewer, etc.</u>) do not qualify as an “Overriding Public Necessity.” The requirement applies to the overriding public necessity for the actual land use amendment being requested, not the need for amenities offered, and will be considered only for the actual footprint of the intended use. <del>For proposed or requested density increases, overriding public necessity may be found only when the inventories of both residential dwelling units and buildable lots, available for purchase on a county wide basis, is essentially exhausted.”</del></li> </ul>
	<ul style="list-style-type: none"> <li>• Ruby Daniels recommended that the first sentence be deleted, and to add the first two sentences from the preliminary draft language provided by the County. The others did not agree with this change and Ms. Daniels agreed to the changes shown above.</li> <li>• She also recommended that the language be kept simple, easy to read and interpret. Her recommended changes were based on the structure of the language and it was too legalese.</li> </ul>

	<ul style="list-style-type: none"> <li>• “It is just as important to say what OPN is not, as it is to say what it is.”</li> </ul>
	<ul style="list-style-type: none"> <li>• Steve Brodtkin explained that the public safety component of OPN should not be used as an excuse to increase density. The public safety need should be to address the current population, not to increase the population to support the need. As an example, the need for a fire station should not trigger additional density just to financially support the use.</li> <li>• Ruby Daniels expressed similar concerns.</li> </ul>
	<ul style="list-style-type: none"> <li>• Max Forgey discussed that the definition should be based on             <ol style="list-style-type: none"> <li>1. Essential indispensable need</li> <li>2. Pre-existing condition</li> <li>3. Not prompted or caused by a proposed development.</li> </ol> </li> <li>• He also recommended that the word “unavoidable” be changed to “indispensible” but the others did not agree.</li> </ul>
	<ul style="list-style-type: none"> <li>• Bruce Strayhorn clarified a number of items including whether the need should be county-wide based (where Locally Unacceptable Land Uses could be located in their community), or if it should be based on the need of the individual planning community.</li> </ul>
	<ul style="list-style-type: none"> <li>• Karen Asfour discussed the existing problem with the Caloosahatchee Shores Lee Plan language. With regards to the River Hall project, they were told that it was not the Lee Plan land use category that was an issue; rather it was the zoning land uses that would be permitted.</li> <li>• She expressed concern that a teeny part of the project providing the overriding public need not be used to increase the density on hundreds of acres. She agrees with the definition to keep it to the footprint of the building.</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• Ed Kimball stated it was important that the term “rural” be defined in the Lee Plan Glossary.</li> <li>• Holly Schwartz recommended that the County Attorney be invited to the next Council meeting to discuss the proposed amendments.</li> </ul>
<b>Amendment to Caloosahatchee Shores Policy</b>	<ul style="list-style-type: none"> <li>• The Community did not agree with County’s proposed amendment and agreed to the following language instead:   <b>POLICY 21.1.5:</b> One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its <del>rural character and</del> <u>Rural</u> land uses where <del>it currently they exist (as of May 15, 2009).</del> Therefore no land use map amendments to the remaining <del>rural</del> <u>Rural Future Land Use Map</u> lands category will be permitted <u>on Rural Future Land Use Map</u> category lands after May 15, 2009, unless a finding of overriding public necessity <u>(as defined in the Lee Plan dated XXXX, adopted by Ordinance #)</u> for the requested land use is made by three members of the Board of County Commissioners.</li> </ul>
<b>Discussion</b>	<ul style="list-style-type: none"> <li>• Delete the underlined language after the Board of County Commissioners.</li> <li>• Capitalize the “R” in Rural</li> <li>• Tie the OPN definition to the date and Ordinance number</li> </ul>



<p><b>Amendment to Alva Community Policy 26.2.2</b></p>	<p>Ruby Daniels provided a summary of the Alva Community’s proposed amendment</p> <ul style="list-style-type: none"> <li>• They agreed to insert “for the requested land use.”</li> <li>• They do not agree with the last paragraph that states, <u>“The overriding public necessity requirement may be set aside by a supermajority vote of the members of the Board of County Commissioners upon making a legislative finding that setting aside the requirement serves a legitimate public purpose.</u></li> <li>• It is unwarranted and weakens the intent</li> <li>• They also do not understand the phrases legislative finding and legitimate public purposes and how they would apply</li> </ul>
---	--

19 Attendees: See attached sign in sheet

DRAFT

March 17, 2015  
Caloosahatchee  
Shores

Sign In Sheet

<u>NAME</u>	<u>EMAIL</u>
SHARON JENKINS-OWEN	SJO@leegov.com
Shellie Johnson	shelliej@en-site.com
RICHARD G. KORE	SUN-N-FUN
TOM LEHNER +	TLEHNER@BANKSENG.COM
BRENT EVANS	BEVANS@CRECHAMOUNTAIN.COM
GREG BRUNSELL	gregory.brunsell@7-11.com
Paul O'Connor	occonnops@leegov.com
ROSALIE PRESTAKRI	NA
ED KUMSBALC	KIMELV@NETZERO.COM
JIM GIEDEMAN	JIMGIED@VAPRO
Janet Jones	alvadogan@gmail.com
MAX FORGEY	max@forgeyplanning.com
Bruce Strayhorn	bruce@strayhornlaw.com
DARREN WATKINS	dmwatkin@gmail.com
Ruby Daniel	
HOLLY SCHWARTZ	HOLLY031@CENTURYLINK.NET
Steve Brodvin	Steweb23@aol.com
TS Cannamela	TS@Buckingham-Farms.com
Karen Astour	Karenaz4@comcast.net

# East Lee County Council Meeting 3/17/2015

## Agenda Items

### Caloosahatchee Shores Plan Review Committee:

- Hemingway Pointe: A request for a Residential Option for an existing zoning.  
Existing : 204 Multi- Family or Town Homes  
Add Option : 104 Single Family units
- Amended Information for: 7Eleven 14401 Palm Beach Blvd. Case# SEZ2015-01  
Request for a "special exception 16 pumps"  
County Code currently allows 8 Pump Max.
- Meeting to review changes to the FPL- Surge Wall Project :  
Date: 4/1/2015 / Time: 2pm / Location: Fire Station
  - Remember we are a Review Committee and do not have a **vote**, we do make comments that a forwarded to County Staff.
- Adjourn Meeting

### Open East Lee County Council mtg.

The sole issue on the agenda is protection of Rural Lands within the Planning Communities of our Membership ! We will take on **Three Issues**.

- Defining "Overriding Public Necessity"- **THE MOST IMMEDIATE ISSUE.**  
(County Legal Staff sponsored Plan Amendment)
  - Discuss the proposal language in tonight's hand-out
  - Whatever we provide may not be approved by Staff as part that amendment effort.
  - We understand that staff would like to add whatever the definition to the Lee Plan glossary of terms. Our discussion should also center on whether our definition should be incorporated in the individual Community Plans.



Cont'd.

- Discuss Options to clarify Rural. Commissioners saying a property does not look Rural or saying that the policy that describes non-urban areas uses the description that these are areas that are not programmed to receive Urban Services.
- Communities should review the LDC Language associated with the Individual plans, and that it supports the rural qualities that you are trying to protect.

Time permitting- the future of the ELCC.

**CALOOSAHATCHEE SHORES COMMUNITY MEETING**  
**March 17, 2015**

**Defining “Overriding Public Necessity”**

**Proposed Amendment to Glossary**

**“Overriding Public Necessity”** - is an essential need of the community that requires precedence over other considerations or interests. When used in the context of a community plan, the term “public” is defined as the community planning area in which the applicant’s property is located or, when applicable, the community planning areas neighboring the applicant’s property. *(Preliminary draft language for community discussion)*

**Proposed Amendment to Caloosahatchee Shores Community Plan**

**POLICY 21.1.5:** One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its’ rural character and rural land uses where ~~it currently~~ they exist (as of May 15, 2009). Therefore no land use map amendments to the remaining ~~rural~~ Rural Future Land Use lands category will be permitted on rural land after May 15, 2009, unless a finding of overriding public necessity for the requested land use is made by three members of the Board of County Commissioners. For purposes of this policy only, a finding that the property subject to the Plan amendment was rural land as of May 15, 2009 must be made prior to applying the requirements for an overriding public necessity.

For purposes of this policy, rural land is described as lands that:

- (1) have low density residential, agricultural uses, or minimal non-residential land uses that are needed to serve the rural community; and,
- (2) do not have and are not programmed to receive the requisite services, facilities, capital improvements, and infrastructure necessary to support growth and development at levels of urban density and intensity.

The overriding public necessity requirement may be set aside by a supermajority vote of the members of the Board of County Commissioners upon making a legislative finding that setting aside the requirement serves a legitimate public purpose.

Jerry

### Overriding Public Necessity

An unavoidable and essential need of the residents of the Community as a whole, where the welfare of the public is regarded as superior to the interests of individuals, and when there is a conflict between them, the latter must give way. Increases in density to support services and/or infrastructure (e.g. schools, hospitals, fire and rescue service, water and sewer, etc.) do not qualify as an "overriding public necessity". The requirement applies to the overriding public necessity for the actual land use amendment being requested, not the need for amenities offered, and will be considered only for the actual footprint of the intended use. For proposed or requested density increases, overriding public necessity may be found only when the inventories of both residential dwelling units and buildable lots, available for purchase on a county-wide basis, is essentially exhausted.