

**Defining Overriding Public Necessity (OPN)  
Alva Community Meeting  
February 9, 2015**

<b>Meeting Synopsis</b>	
<b>Amendment to Policy 26.2.2</b>	<p>Ruby Daniels: Delete last paragraph.</p> <ul style="list-style-type: none"> <li>• It's not what the community wants and it weakens the ability to restrict density/growth.</li> <li>• It takes away rights</li> <li>• They like the language the way it is now</li> </ul>
<b>Discussion Items:</b>	<p>Ruby Daniels:</p> <ul style="list-style-type: none"> <li>• OPN should not be used to encourage additional density. For example, if a hospital is determined to be a "public necessity," it shouldn't be the reason to increase the current allowable residential density.</li> <li>• She prefers Lee Plan Policy 26.2.2 to remain as is. It was approved unanimously by the BoCC, vetted by the County Attorney at the time, and enthusiastically supported by the Board. She does not support the proposed last paragraph.</li> <li>• Other public uses mentioned included Fire Stations, Sherriff's Substation, Public Park, Women's Abuse Center, Hospital, "or anything needed by the community."</li> <li>• Determining OPN should be based on data from official sources. It should be a high standard to meet.</li> <li>• Rural is to be one acre or LESS</li> <li>• Determine build-out population/ dwelling units – Has Alva's percentage of allotted population been exceeded?</li> <li>• Referred to "agricultural refugees from Broward County" and how they were chased out of Broward because of development</li> <li>• At what point does the development become non-sustainable affecting our quality of life. (They don't want to be shoulder-to-shoulder). They want to protect their rural quality of life.</li> </ul>
	<p>Joyce Pilewski:</p> <ul style="list-style-type: none"> <li>• Keep area Rural</li> <li>• Meeting OPN should be based on a high standard</li> </ul>
	<p>Ed Kimball:</p> <ul style="list-style-type: none"> <li>• "Overriding Public Necessity- is a designation indicating that a class of infrastructure or service is essential to the protection of public health, safety, or welfare; the maintenance of public order; the advancement of public education; or civic preeminent needs of similar importance within the general population."</li> </ul>
	<p>General Conversation:</p> <ul style="list-style-type: none"> <li>• The Alva community was not in complete agreement on the above definition. They said it needed work. They were concerned that the "health, safety, or welfare" language would lead back to increasing density for a public use when the public use should only come if the density is already in place.</li> </ul>

	<p>Don Ruane: (Spoke and provided written comments)</p> <ul style="list-style-type: none"> <li>• “OPN is a standard challenging the expressed need for more density. The definition should define the necessity and require the applicant to show how the additional density will satisfy the necessity. The applicant is saying we need these houses because there is an overriding public need to be met and as a result of providing the additional units there will be an opportunity to meet the overwhelming need. The extra density must be part of the solution to a need that needs to be satisfied ASAP”</li> <li>• Require applicant to define public necessity and how they will meet the need.</li> <li>• For example, it may be an Overwhelming need if the fire dept cannot afford to buy the necessary equipment to protect the district. More density/population may be needed to be able to collect the fees to support the purchase of needed equipment.</li> <li>• Another example of a public necessity is increasing density to balance the BoCC Commission district lines which are based on population.</li> <li>• If the Developer/Applicant can’t demonstrate OPN, the application dies</li> <li>• Essential Need should be defined</li> </ul>
	<p>Connie Dennis:</p> <ul style="list-style-type: none"> <li>• Define the term “Public.” What happens if the Community Planning Board changes and one neighbor thinks the applicant met OPN and the other doesn’t?</li> <li>• Doesn’t like the term “Overriding Public Necessity” because it encourages density to support a public use that may be better in a different place.</li> <li>• She supports Paul and Dave’s comments. The Community should have input.</li> </ul>
	<p>Ed Kimball:</p> <ul style="list-style-type: none"> <li>• Rural needs to be defined</li> <li>• Discussed proposed definition - designation indicating that a class of infrastructure or service is essential to the protection of public health, safety, or welfare;</li> <li>• Extension of utilities is interpreted to mean that the area is no longer rural</li> <li>• Frustrated that language can be reinterpreted</li> <li>• Define supermajority (Ruby explained it was best left the way it is so the supermajority would always be based on the number of commissioners.)</li> <li>• Entitled platted lots can accommodate millions. Don’t want to look like Broward County.</li> </ul>
	<p>Steve Brodtkin:</p> <ul style="list-style-type: none"> <li>• Discussed eminent domain issue; could be considered a “taking”</li> <li>• Language can be twisted so it no longer means the original intent.</li> <li>• Doesn’t like “set aside” language – It weakens the plan</li> <li>• County is trying to fix something that hasn’t happened yet. The “fix” is based on something the County Attorney assumes the State will adopt. He recommends that the amendment wait until the State adopts the provision and then fix it.</li> </ul>

	<ul style="list-style-type: none"> <li>Likes Ed's proposed OPN definition, but there may be some problems with it. He likes proposed OPN definition but may need tweaking. The communities should be the ones to make the final decision.</li> </ul>
	<p>Paul Furbay:</p> <ul style="list-style-type: none"> <li>No land use should be made more intensive without the community's approval. It should be the community's approval, not the Board of County Commissioners</li> </ul>
	<p>Dave Nelson:</p> <ul style="list-style-type: none"> <li>We shouldn't be forced about where stuff goes.</li> <li><i>"Don't come in and tell us where"</i></li> </ul>

Attendees:

Ruby Daniels  
 Dave Nelson  
 Paul Furbay  
 Joyce Pilewski  
 Don Ruane  
 Ed Kimball  
 Steven Brodtkin  
 Connie Dennis  
 Sharon Jenkins-Owen  
 Brandon Dunn

**Alva Planning Panel's response to proposed changes to Policy 26.2.2 in the Alva Community Plan**

We will agree to the insertion of the phrase for the requested land use in the sentence: No land use amendments to a more intensive category will be permitted unless a finding of overriding public necessity for the requested land use is made by a supermajority of the members of the Board of County Commissioners.

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

The Alva Planning Panel cannot accept the proposed addition to Policy 26.2.2 for the following reasons.

We do not understand the phrases legislative finding and a legitimate public purpose. What is a legislative finding and what standards must be in place to determine a legitimate public purpose.

Further, we feel Policy 26.2.2 with the inserted phrase for the requested land use gives the Board of County Commissioners and the Alva Planning Panel the tools to deal fairly and justly with any applicant seeking a density increase in the Alva Planning Community. Adoption of the proposed language would weaken our ability to meet our community's goals to promote and protect our rural, agricultural history and culture. The Alva Planning Panel and community went through all the prescribe procedures to receive grant monies to hire a professional planner to help us develop our community plan. We held many advertised public meetings, met with individual groups and individuals to gather and distribute information. We underwent reviews from county departments, and hearings in front of the Board of County Commissioners. At the BOCC hearing, our language and intent for the language was fully vetted by the county attorney and members of the Board. The Alva Community Plan was adopted by Board of County Commissioners in a vote of 5 to 0. Our Planning Panel believes we have earned the right to have a strong voice in planning the future of our community. To accept the proposed language weakens our ability to speak forcefully and accomplish our goals. We respectfully reject the proposed addition of 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 to Policy 26.2.2.

**ALVA INC AGENDA**  
**February 9, 2015**

- A. Call to Order**
- B. Welcome**
- C. Pledge of Allegiance**
- D. Secretary's Report**
- E. Treasure's Report**
- F. Defining Overriding Public Necessity**
- G. Member Concerns**
- H. Community Calendar**
  - General Meeting Alva, Inc. March 9, 2015, ACC, 7:00 PM**
  - School Committee, Alva School Library, 7:00 PM**
  - Impact Fee Hearing, BOCC, March 3, 2015, 9:30 AM**
  - Alva Garden Club/Museum, March 17, 2015, 2:00 PM**
- K. Adjournment**

**ALVA COMMUNITY PLANNING PANEL  
FEBRUARY 9, 2015**

**DEFINING “OVERRIDING PUBLIC NECESSITY”**

The Board of County Commissioners has directed Staff to prepare a Comprehensive Plan Amendment to add a definition for “Overriding Public Necessity” to the Lee Plan Glossary. Defining the term will provide consistent use of the term throughout the Lee Plan document. We appreciate the opportunity to gather input from the Alva community at your February 9<sup>th</sup> meeting which will help define Overriding Public Necessity and also to review the proposed amendment language provided below.

**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 Alva Community Plan**

**POLICY 26.2.2:** Land use amendments that would increase the allowable total density of Alva are discouraged. Land use amendments that would decrease the allowable total density of the area and that are otherwise consistent with the objectives and policies of this goal are encouraged in Alva. No land use amendments to a more intensive category will be permitted unless a finding of overriding public necessity for the requested land use is made by a supermajority of the members of the Board of County Commissioners.

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.