

**Defining Overriding Public Necessity (OPN)
Bayshore Community Meeting
February 10, 2015**

Meeting Synopsis	
Defining Overriding Public Necessity (OPN):	<p>Community proposed:</p> <p>“Overriding Public Necessity- An unavoidable and essential need of the residents of the community as a whole, where the interests of the community take precedence over other considerations or interests. In recognition that the LOS is lower in rural areas than urban areas, Increases in density to support infrastructure (e.g. schools, hospitals, fire and rescue service, water and sewer service, etc.) do not qualify as an “overriding public necessity.”</p>
	<ul style="list-style-type: none"> • They are not sure if “infrastructure” is the correct term • OPN Language presented in River Hall Staff Report was “okay”. A few things need to be added to it: <p>“An unavoidable or indispensable need of affected citizens that requires precedence over other considerations or interests.”</p>
Amendment to Objective 20.1	<p>Delete last paragraph.</p> <ul style="list-style-type: none"> • They oppose the set aside language. • It’s not what the community wants and it weakens the ability to restrict density/growth. • It takes away rights
	<ul style="list-style-type: none"> • Bayshore prefers the EAR language as approved by the LPA Feb 2014: <p>“Objective 7.1: Land use amendments that increase density within the Bayshore Community are strongly discouraged. Land use amendments that decrease the density of the Bayshore Community are strongly encouraged. Land use amendments to a more intensive category will only be permitted if a finding of overriding public necessity is made by a supermajority of the full Board of County Commissioners. (Relocated and Modified from the Future Land Use Element) (Formerly Objective 20.1)”</p>
	<ul style="list-style-type: none"> • Bayshore would really prefer if their modifications were added to the approved LPA language <p>“Objective 7.1: Land use amendments that increase density within the Bayshore Community are strongly discouraged. Land use amendments that decrease the density of the Bayshore Community are strongly encouraged. Land use amendments to a more intensive category will only be permitted if a finding of overriding public necessity is made by a supermajority of the full Board of County Commissioners.</p> <p><u>The intent of this policy is to curb the incremental loss of lands within the planning community to higher residential densities, on order to maintain</u></p>

	<p><u>Bayshore as a low density, uncongested area, and preserve the community's rural quality of life. The requirement applies to the overriding public necessity for the actual land use amendment being requested, and not the need for public amenities offered. Increases in density to support infrastructure and services (e.g. schools, hospitals, fire and rescue service, water and sewer service, etc.) do not qualify as an "overriding public necessity."</u></p>
Discussion Items:	<ul style="list-style-type: none"> • OPN: • Absolutely for the benefit of the majority – not just for a few; • Needs to be in the best interest of Bayshore.
	<ul style="list-style-type: none"> • Questioned build out population and if allocation has been "used-up"
	<p>OPN:</p> <ul style="list-style-type: none"> • Plays into density considering flooding issues. Density increases flooding • Density is a public safety issue • Water / aquifer issue • Want the land to remain rural • Want to set a high bar for OPN
	<p>The community supports the definition of public necessity as provided by Karen Kamener. The definition of public necessity is provided in the North Dakota Law Review article titled, "<u>Public and Private Necessity and The Violation of Property Rights.</u>" It should be noted that the article cites that the definition of public necessity is from the Black's Law Dictionary 1059 (8th ed. 2004)</p> <p>"Public necessity pertains to action taken by public authorities or private individuals to avert a public calamity.⁴ The action consists in destroying or appropriating another's property.⁵ The classic example of public necessity is the destruction of private property to prevent the spread of fire⁶ or disease,⁷ and hence to avert an injury to the public at large. Public necessity is in operation where the police trespass on or damage private property in order to apprehend a criminal suspect or gain access to the site of an emergency.⁸ The principle behind public necessity is that the law regards the welfare of the public as superior to the interests of individuals and, when there is a conflict between them, the latter must give way⁹"</p> <p>(The Community indicated that the sentences bolded above "are particularly appropriate.")</p>

Attendees:

Steve Brodtkin
Debbie Jackow
Pam Leppala
Jim Leppala
Dan Wiltberger
David Lewis
Tracey L. Freund
Anthony Ferrari
Karen Kamener
Brandon Dunn
Sharon Jenkins-Owen

**BAYSHORE COMMUNITY MEETING
FEBRUARY 10, 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 Bayshore Community Plan

OBJECTIVE 20.1: LAND USE. The existing land use designations of the Lee Plan (as of September 30, 2001) are appropriate to achieving the goal of the Bayshore Plan. No land use map amendments to a more intensive category will be permitted after March 11, 2003, unless a finding of overriding public necessity for the requested land use is made by three 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.



The Concerned Citizens of Bayshore Community, Inc.

Meeting Minutes, Annual Meeting, February 10, 2015

The annual meeting of CCBC was held at the New Hope Christian Church on Tarpon Way. The meeting started shortly after 6:30 PM. Members in attendance were Pam Leppala, Jim Leppala, Karen Kamener, Steve Brodtkin, and Debbie Jackow. Four of the five CCBC Directors were present constituting a quorum. Others in attendance were community members Anthony Ferrari, Tracy Freund, David Lewis, and Dan Wiltberger. County Staff attending were Sharon Jenkins-Owen and Tony Palermo.

The members and visitors discussed changes and additions to the Bayshore Plan with Lee County Planners Sharon Jenkin-Owen and Brandon Dunn. The CCBC Board requested returning some of the language in the current Bayshore Plan draft, prepared by Staff, to the language already approved by the LPA, CCBC, and County Staff in February 2014. In addition the CCBC Board wants language, as submitted by CCBC, to be added to Objective 2.1 to clarify the intent of the Objective.

Also discussed was the definition of "overriding public necessity", both the county's proposed definition and CCBC's definition. Lee County Planners will also be meeting on February 19th with Buckingham residents and on March 17th with the East Lee County Council to discuss the definition for "overriding public necessity" to be added to the Lee Plan. Steve agreed to send County Staff an updated draft of the Bayshore Plan reflecting items discussed, and a definition for "overriding public necessity" from CCBC, in the near future.

Residents neighboring the applicant's property on Tarpon Way attended to discuss the variance currently being considered by the Hearing Examiner for a boat ramp and dock. The problems they've been having with the applicant were reviewed and they are anxiously waiting for the Hearing Examiner's decision.

The CCBC nominating committee submitted recommendations for the 2015 Officers and Directors.

President/Treasurer/Director: Steve Brodtkin

Vice President/Secretary/Director: Debbie Jackow

Director: Karen Kamener

Director: Pam Leppala

Director: Carolyn Morton

Director: Shelley Traurig

Jenkins-Owen, Sharon

From: Steveb239@aol.com
Sent: Sunday, February 22, 2015 10:25 PM
To: Jenkins-Owen, Sharon; Shadowfaxfan@earthlink.net; debjack12@gmail.com
Cc: Dunn, Brandon; Palermo, Anthony; pamsfeed@gmail.com; MortonPalm@yahoo.com; sat300@aol.com; O'Connor, Paul; Gibbs, Mary
Subject: Re: Bayshore Community Meeting synopsis.docx
Attachments: CC73B4~1.DOC

Hi Sharon,

We wanted to comment on your meeting notes from our CCBC meeting. Under community proposed OPN you added the word *county* in parentheses, and we don't know why. It's meant to say "interests of the community" as was written.

As mentioned at the meeting we want to submit a revised modification to Objective 7.1 (below). The modification clarifies the purpose of the objective and what is meant by "essential need of the residents of the planning community as a whole".

Objective 7.1: Land use amendments that increase density within the Bayshore Community are strongly discouraged. Land use amendments that decrease the density of the Bayshore Community are strongly encouraged. Land use amendments to a more intensive category will only be permitted if a finding of overriding public necessity is made by a supermajority of the full Board of County Commissioners. The intent of this policy is to curb the incremental loss of lands within the planning community to higher residential densities, on order to maintain Bayshore as a low density, uncongested area, and preserve the community's rural quality of life. The requirement applies to the overriding public necessity for the actual land use amendment being requested, and not the need for public amenities offered. Increases in density to support infrastructure and services (e.g. schools, hospitals, fire and rescue service, water and sewer service, etc.) do not qualify as an "overriding public necessity."

In your notes under "Discussion Items:" it says OPN:"Damn well need". We're trying to think about what was meant there.

In the information Karen submitted regarding OPN from the Black's Law Dictionary, the first and last sentences are particularly appropriate.

"Public necessity pertains to action taken by public authorities or private individuals to avert a public calamity. The principle behind public necessity is that the law regards the welfare of the public as superior to the interests of individuals and, when there is a conflict between them, the latter must give way."

By the way, you probably know this, but I looked it up and e.g. means *for example*, and i.e. means *that is*. So I used e.g. in the last sentence of Objective 7.1.

Thank you for coming to our meeting and continuing to work with us. Debbie has written our minutes but she's had computer problems, so I'll be forwarding them to our Board for approval. Once they're approved I'll send them to you. Karen supplied you with the names of the people attending our meeting in case you needed them before our minutes are available.

Thanks,

Steve

CCBC

In a message dated 2/18/2015 8:53:09 A.M. Eastern Standard Time, SJenkins-Owen@leegov.com writes:

Good morning,

Please review the attached notes from the OPN meeting and let me know if I missed anything.

Also, I would like to list the names of the attendees.

Can you provide me a copy of the sign in sheet or just e-mail the names to me?

Thanks!

Sharon

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