


Search Home :: Search Results :: The Regular Meeting of the Board of Lee County Commissioners was held this date with the following Commissioners present:

LeeClerk.org  
[Download]

[Previous document](#) | [Next document](#)

 **The Regular Meeting of the Board of Lee County Commissioners was held this date with the following Commissioners present:**

**Search Terms:** 01 09 2003

BOOK - 2003R - B.O.C.C.-----PAGE: 37

[JANUARY <09> <2003>](#)

A Meeting of the Board of Lee County Commissioners was held this date to conduct a Public Hearing to adopt the 2001/2002 Lee Plan Amendments to the Lee County Comprehensive Plan, with the following Commissioners present:

Ray Judah, Chairman  
John E. Albion, Vice-Chairman  
Douglas R. St. Cerny  
Andrew Coy  
Robert P. Janes

ON FILE IN THE MINUTES OFFICE: ALL CPA REPORTS, ALONG WITH THEIR BACKUP MATERIAL; PROPOSED ORDINANCE; THE DEPARTMENT OF COMMUNITY AFFAIRS (DCA) OBJECTIONS, RECOMMENDATIONS, AND COMMENTS REPORT (ORC); AND A MEMORANDUM FROM COMMUNITY DEVELOPMENT PLANNING DIRECTOR PAUL S. O'CONNOR, DATED DECEMBER 23, 2002.

IMMEDIATELY FOLLOWING DISCUSSION AND ACTION ON CPA 2001-18, ATTORNEY JONES CLARIFIED THAT THE VOTES COVER BOTH THE AMENDMENTS AND THE ORDINANCES.

**1. Call to order; Certification of Affidavit of Publication.**

The Chairman called the meeting to order at 9:33 a.m. Assistant County Attorney Donna Marie Collins approved as to legal form and sufficiency, the Affidavit of Publication regarding this item; and briefly described the agenda for today's meeting.

**2. Community Plan Agenda**

**A. CPA 2001-10**

Amend the Lee Plan to incorporate the recommendations of the Captiva Island Community Planning effort, establishing a Goal and subsequent Objectives and Policies specific to the Captiva Island community.

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-10 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, along with its objections and recommendations, can be found on page 31 of the CPA 2001-10 Public Hearing Document.

Staff's recommendation is to adopt the amendment as transmitted with the exception of Policy 21.9.

Planning Division Community Planner James Mudd stated that DCA felt the language for Policy 21.9 which read: "Mangroves on Captiva Island should be protected" was vague; and suggested revising it to establish guidelines applicable to development on Captiva Island. He continued by stating that Staff recommends the following language to address the State's comment: "Amend the Land Development Code (LDC) to establish sufficient setback requirement to place fill near existing mangroves or require development designs that address the interface of fill areas"

with the existing mangroves to eliminate impacts from fill sloughing or washing into mangroves areas. Development designs in this context include setbacks, stabilized slopes, retaining walls, rip rap revetments, etc. Mr. Mudd requested that the Board adopt the amendment as transmitted, with the exception of Policy 21.9; and that the amended language be included in Policy 21.9. The Chairman called for public input; and the following persons came forward in support of the amendment:

Captiva Community Planning Panel (CCP) Vice-Chairman Dave Jensen  
 Captiva Property Owners Association (CPOA) Treasurer René Miville  
 Attorney Steven C. Hartsell, of the law firm of Pavese, Haverfield, et al., representing Plantation  
Development Limited

The following individuals came forward to express concerns and offer suggestions:

CPOA President Sharon Brace (copy of handout on file in the Minutes Office)  
 Captiva Resident Bob Brace

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.-----PAGE:

38

Mr. David Depew, Morris-Depew Associates Inc., representing the Captiva Community Planning Panel (CCPP)

Among the concerns expressed by the citizens were: the nature of the Community Planning process and whether the process was the Community's or the County's planning process for the Community; and the State land planning agency shall not require local government to duplicate or exceed that permitting program in its Comprehensive Plan. Several of the speakers suggestions were: that Staff should include that "Lee County will adhere to the existing mangrove laws set forth by the EPA and have strict guidance about them"; that Staff's recommendation pertaining to the mangroves should be applied County-wide; and that the amendment should be pulled out to allow review. During Mr. Depew's comments regarding Policy 21.5 (page 3 of 32), Commissioner Judah stated that this language was transmitted back from Department of Community Affairs (DCA). Mr. Depew opined that the language shown on Policy 21.5 (page 5 of 32) could be a scrivener's error, opined that the language on Policy 21.4 (page 3 of 32) was transmitted, and urged the Board to adopt the language on page 3. Community Development Planner Matt Noble clarified that the language referenced by Mr. Depew was transmitted and that Staff's recommendation today is to include that language; and Commissioner Judah noted that it was Policy 21.4 as written on page 3. Community Development Planning Director Paul S. O'Connor stated that the Florida Statute requires the County to transmit all original language from Staff and the Local Planning Agency (LPA) to DCA, so there is a historic record of the transmitted language there. In response to Commissioner Janes' question, Mr. O'Connor stated that the motion does not have to amend the language on Policy 21.4; and noted that the only clarification pertained to the mangroves. Commissioners Janes and Coy suggested that the Board pull out the amendment and send it back to the Captiva Community Planning Panel (CCPP). Assistant County Attorney Timothy Jones stated that the Board is not bound to any decision, mentioned that the Board can delete the amendment and direct the CCPP to come back with more specific language, and remarked that the County simply enforces DCA's conditions. Commissioner Coy opined that if the amendment is pulled out, the review should be maintained at local level. In response to Commissioner Judah's question of whether Policy 21.5 should apply County-wide, Mr. O'Connor, concurring with Attorney Jones' comments, stated that it is the County's policy not to deal with the actual permitting of impacts to the mangroves; and mentioned that Staff had to address the issue of sloughing or encroaching onto the mangroves. Commissioner Judah noted that it was only reasonable that the language come back as a policy for the entire County. Commissioner Albion suggested indicating past problems on the report to narrow down the discussion. Commissioner Judah asked whether the Board retains the existing language that DCA objected to, but still provides some measure of protection. Attorney Jones advised that the Board drop the language entirely, as DCA objected to it; and expressed approval of conducting an analysis to incorporate the protective language through the evaluation process. Commissioner Janes moved to drop Policy 21.9. Commissioner Judah added that it is understood that Policy 21.4 or the beach erosion issue needs to be retained in its entirety. The maker of the motion concurred. Commissioner Coy seconded the motion. Commissioner Janes commented that Captiva Island has made a great effort to develop their Community Plan. The motion was called and carried.

#### B. Adopt an Ordinance which adopts CPA 2001-10

The Ordinance adopted by the Board action above and filed was LEE COUNTY ORDINANCE NO. 03-01  
 ENTITLED:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN,  
 COMMONLY KNOWN AS THE "LEE PLAN", ADOPTED BY ORDINANCE NO.



89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA 2001-10, (PERTAINING TO THE CAPTIVA ISLAND COMMUNITY PLAN) APPROVED DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

C. CPA 2001-09

Amend the Future Land Use Element text of the Lee Plan to incorporate the recommendations of the Bayshore Steering Committee, establishing a Vision Statement, Goal and subsequent Objectives and Policies specific to the Bayshore Community.

RECOMMENDATIONS:

The Board's recommendation for CPA 2001-09 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.-----

PAGE:

39

Staff's recommendation is to adopt the amendment as transmitted to the Florida DCA.

Community Development Planner Matt Noble noted that he was available to answer any questions. After noting that the Burt J. Harris (BJH) Act was not mentioned until the first round of amendments, Commissioner Coy remarked that Policies 20.1.2, 20.1.3, and 20.1.4 were later identified as BJH issues; and that he did not want to impose anything on the residents of his district that would cost all taxpayers money. Mr. Noble confirmed that the language being transmitted begins on page 3 of 25, with the exception of Objective 20.3 and that the language was transmitted on page 22. Attorney Jones explained that any regulatory action of the County that changes the currently foreseeable reasonable expectations for development on a parcel creates liability for the taking. Commissioner Coy commented that zoning is not the benchmark for the Burt Harris Act. Discussion was held between Commissioner Coy and Attorney Jones about policy issues with amendments, and about Board flexibility when dealing with zoning applications to change current mining and industrial uses. Mr. Noble noted that there is not a zoned or existing industrial property within this community, mentioned that there is a portion of commercial zoned properties located outside of the proposed land area, and referred to a handout (copy on file in the Minutes Office) that identified 5 existing (non-county owned) commercially zoned properties located outside of the commercial nodes per proposed Policy 20.1.1. In response to Commissioner Albion's question, Mr. Noble confirmed that there are several County-owned commercial zoned properties purchased for Conservation 2020; mentioned that the last two pages of the handout are maps that depict the existing commercial node at Nalle Road, Bayshore Road, River Road, and SR 31; and noted that all of the commercial properties would be consistent with the existing proposal. The Chairman called for public input; and the following persons came forward in support of the amendment:

Bayshore Steering Committee Member and North Fort Myers Resident      Larry Frappier  
 Bayshore resident Butch Ritter  
 Bayshore resident Nick Mellis  
 Bayshore resident Lee Ritter  
 Bayshore Steering Committee Member      Steven Brodtkin  
 Bayshore resident Mark Penfield

The following individuals came forward to express concerns, offer suggestions, and/or request additional information:

Bayshore resident Jim Cochran  
 Bayshore Steering Committee Consultant      Mike Roeder

During public comments, Attorney Jones suggested that the language in Policy 20.1.2, bottom of page 3, first sentence, be changed to read: "Commercial stables or tack and feed stores are exempt from meeting commercial site location standards." Among the concerns and comments expressed by the citizens were: the County taking the property owner's rights away without compensation, and the fact that anything that restricts land use could raise a BJH claim. During public comments, Commissioner Judah asked whether there was any discussion to vest smaller parcels not located in the commercial node that already have zoning for retail. Mr. Roeder stated that the Committee



vested the existing commercial zoning that did not meet site location standards; and noted that Mr. Cochran's property is located on a designated tract, and that the interchange was approved for retail. In response to Commissioner Judah's question, Mr. Noble referred to his map; and confirmed that Mr. Cochran's property was covered with the potential for commercial retail. Commissioner Coy asked whether the adoption of the entire community plan as is would take away already permitted zoning. Mr. Roeder stated that the only possibility would be the existing farm store at Durrance Road and Bayshore Road, which does not meet the policy. Mr. Noble added that another property is at Slater Road and Nalle Road that is designated open lands, and noted that there are minimal uses that can be achieved on the property. In response to Commissioner Coy's question, Mr. Noble stated that the property is zoned C-1A; and noted that proposed amendment as is would not allow retail uses that are permissible under the C-1A zoning. Mr. Roeder mentioned that a Board open-lands policy adopted in 1984 does not allow retail uses. Attorney Jones stated that he could not confirm Mr. Roeder's comments as the data gathering has not been done to advise the Board about liability without analysis; pointed out that this is a quintessential legislative policy for the Board to make; and mentioned that the data given does not address non-commercial zoned properties that meet site location standards today. Mr. Roeder commented that his Land Use Attorney said that a BJH claim can be resolved by granting the land use. Attorney Jones remarked that Chapter 163 allows for no variance, and mentioned that the Board cannot ignore the Comprehensive Plan. Mr. Roeder concluded by requesting that the Board adopt the plan as proposed; and stated that his clients would not have problems if the County decides to "carve out" the intersection at Durrance Road and Bayshore Road, as it will not be developed. Attorney Jones disagreed that there is no exposure or liability on the mining issue; and noted that Staff's analysis on the area was very general. In reply to Commissioner Albion's inquiry, Attorney Jones stated that the County Attorney's Office raised the issue about the BJH liability and the need for an independent analysis several months ago. Community Development Planning Director Paul S. O'Connor stated that the issue is whether it is worth exposing the County to liability to address the residents' concerns, mentioned that there is a financial balance when dealing with different areas of the County, and apprised that the Board should consider the number of case law pertaining to the issue. Attorney Jones explained that there have been

-----APPROVED MINUTES OF 010903CP.DOC-----

no appeals or appellate cases as they have been settled, and noted that local governments are extremely cautious with liability. In response to Commissioner Judah's question, Attorney Jones stated that this act was written to have a chilling effect on reductions in property uses by local governments. Commissioner Judah opined that the act has affected the ability of the communities to be able to provide for responsible planning and management of growth. Commissioner Coy apprised that if the Board approves the amendment as is, Mr. Cochran would lose his zoning and the farm store property at Durrance Road and Bayshore Road would lose zoning rights; and opined that the farm store property should be vested. Attorney Jones commented on the purposes for vesting the property. Mr. Noble suggested that the Board can pull out, as an exemption, the property address and Policy 20.1.2, similar to the convenience store on SR 31 and the restaurant on Bayshore Road. He explained that the property could be developed with retail uses no matter what the policy states. In response to Commissioner Coy's question regarding the Slater Road/Nalle Road property rights, Mr. Noble stated that the open lands category would allow some limited uses, as would the rural land use category. Commissioner Coy moved to approve the Bayshore Community Plan as written, pulling out the Farm Store at Durrance Road and Bayshore Road, and pulling out the property at Slater Road and Nalle Road that has an existing C-1A zoning. Attorney Jones requested that the amended language to Policy 20.1.2 be included in the motion, and Commissioner Albion stated that it was "Commercial stables or tack and feed stores are exempt from meeting site location standards". The maker of the motion agreed, and Commissioner St. Cerny seconded the motion. Commissioner Albion remarked that mining as submitted should remain intact; and commented that if the County would have to "fold" because of a BJH lawsuit there would need to be a change in the Comprehensive Plan, that would require the County and Tallahassee to reach some agreement about how to handle that issue. Commissioner Judah noted that as the motion states "the policy no new mining uses or commercialized excavations are permitted" is to be incorporated in the motion; and thanked the residents of Bayshore. The motion was called and carried.

**D. Adopt an Ordinance which adopts CPA 2001-09**

The Ordinance adopted by the Board action above and filed was ENTITLED:

LEE COUNTY ORDINANCE NO. 03-02.

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN", ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA 2001-09 (PERTAINING TO THE BAYSHORE COMMUNITY PLAN) APPROVED DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.



Following a short break, the Chairman called the meeting back to order with all Commissioners present.

**E. CPA 2001-18**

Amend the Future Land Use Element of the Lee Plan, text and Future Land Use Map series to incorporate the recommendations of the Greater Pine Island Community Planning effort, establish a new Vision Statement, establish a revised Goal 14, amend subsequent Policies specific to Greater Pine Island, amend Objective 1.4 "Non-Urban Areas" by establishing a new "Coastal Rural" future land use category and amend the Future Land Use Map series to reclassify from "Outlying Suburban" to "Coastal Rural" 157 acres of agricultural land between Bokeelia and September Estates and to reclassify all "Rural" designated land to "Coastal Rural".

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-18 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as shown in Part I.B. of the report.

Community Development Planner Matt Noble was available to respond to questions, and stated that DOT Deputy Director David Loveland was present to address the sign issue. Mr. Loveland noted that there is a proposal in the amendment to possibly allow extra directional signage for businesses along Stringfellow Boulevard; clarified that DOT is not comfortable with the proposal as there is a precedent setting nature of the directional signage for businesses on Pine Island; and expressed that there were concerns about the added costs to the County, and that the Consultant suggested that the extra cost be made as part of the fee for businesses to have signage in the rights-of-way.

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.-----PAGE:

41

He added that there is a safety issue about Stringfellow Boulevard's north limited right-of-way and the need for a bike path/sidewalk. The Chairman called for public input; and the following persons came forward in support of the amendment:

Land Use Plan of Pine Island Committee Chairwoman Barbara Dubin  
Eleanor H. Boyd, representing the Responsible Growth Management Coalition

The following persons came forward in opposition to the amendment:

Attorney R. Scott Barker, representing the Hilton Pine Island Limited Partnership (copy of letter on file in the Minutes Office)  
Attorney Matthew Uhle, of the law firm of Knott, Consoer, Ebelini, Hart, & Swett PA, representing Soaring Eagle Corporation and Breeze Glennen

The following individuals came forward to express concerns, offer suggestions, and/or request additional information:

Civic Association Planning Consultant Bill Spikowski  
Mike Roeder, representing Cherry Estates

Among the concerns expressed by the citizens were: that the residents will lose commercial rights in the Rural Land Use Category; that the amendment is vulnerable to a data and analysis objection and should not be approved; that the amendment reduces density and eliminates other uses that could be permitted in the Urban Property; that the Board has pretty much immunized the language about Pine Island concurrency from a BJH challenge by delaying the decision of what to do once the trip threshold has been reached until after the adoption of development regulations; and that the Board should consider changing "these development regulations **may** provide exceptions for legitimate ongoing developments" to "these development regulations **will** provide exceptions for legitimate ongoing developments. During public comment, Mr. Spikowski commented that the Community's Coastal Rural Land Use Category assists in balancing the lack of road access and the abundance of land. Replying to Commissioner Coy's question, Mr. Roeder confirmed that Cherry Estates did have approved zoning. Mr. Noble responding to public comment, acknowledged that the 157 acre property's intensity will be reduced from Outlying Suburban to New Coastal Rural; and remarked that policy language pertaining to Cherry Estates acknowledges that as the County develops regulations Staff might provide exceptions to those already approved developments. Mr. Noble replied to Commissioner Coy's question by stating that the amendment changes the future land use designation not the zoning,

which could affect the future development of those properties. Attorney Jones commented that the County cannot quantify the BJH Act, and opined that it is a balancing test. In response to Commissioner Coy's inquiry, Attorney Jones stated that he did not know if the property owner had approved zoning; however, noted that they do have an existing land use category that allows the higher density that would be eliminated, through this proposed policy, by changing their land use category, and would also eliminate the existing commercial capabilities. Commissioner Albion stated that issue is the designation on the Comprehensive Plan; and mentioned that with the present plan in the area the County has requirements on timing based on road capacity. Attorney Jones stated that "even if you don't change the Land Use Map Category, they are still subject to the road concurrency issue". Commissioner Judah commented on DOT's concerns about liability and setting a precedent with the directional signage. Commissioner Janes remarked that the Board should approve the amendment, and discuss the signage issue later on at the Land Development Code (LDC) process. Commissioner Coy opined that the Board should pull out the signage issue and have Staff bring it back after further review. Commissioner Janes concurred. Mr. Noble stated that the language allows the Community to compile a proposal and pass it through the LDC amendment process; and mentioned that if the proposal is acceptable Staff will add it to the LDC. Commissioner Albion asked whether the Board wanted to exempt the properties with the potential of BJH implications. In response to Commissioner Janes's question regarding the clusters of land on the map, Community Development Planning Director Paul S. noted that he did not know the location of the properties. Commissioner Judah remarked that he was not sure whether the County had the exposure when considering existing threshold on the traffic counts. Commissioner Janes moved the item, seconded by Commissioner St. Cerny. Commissioner Albion apprised that timing will be influenced by the traffic counts. The motion was called and carried.

**F. Adopt an Ordinance which adopts CPA 2001-18**

The Ordinance adopted by the Board action above and filed was LEE COUNTY ORDINANCE NO. 03-03, ENTITLED:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN", ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA 2001-18 (PERTAINING TO THE GREATER PINE ISLAND COMMUNITY PLAN) APPROVED DURING THE COUNTY'S 2001/2002 REGULAR

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.-----PAGE:

42

COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND FUTURE LAND USE MAP; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

AT THIS TIME, COMMUNITY DEVELOPMENT PLANNER MATT NOBLE OFFERED A CLARIFICATION ON ITEM 5(B). SEE THAT PORTION OF THE MEETING.

**3. Public Comment on Consent Agenda**

No one came forward to offer comment.

**4. Consent Items to be pulled for discussion:**

There were no requests for Consent Agenda items to be pulled for discussion by the individual Commissioners.

**5. Consent Agenda - Lee Plan Amendments Adoption**

**A. CPA 2001-11**

Amend the Future Land Use Element, Policy 1.2.2, the Airport Commerce descriptor policy, to broaden the allowable uses and to establish relationships and criteria for those uses.

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-11 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections,



recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**B. CPA 2001-15**

Amend the Future Land Use Map series, Map 1, by updating the Conservation Lands land use categories.

RECOMMENDATIONS:

The Board's recommendation for CPA 2001-15 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

PRIOR TO APPROVAL OF THE CONSENT AGENDA ITEMS:

Community Development Planner Matt Noble informed the Board that it is a technical requirement to provide the State a set of maps (copies on file in the Minutes Office) when the County transmits the adoption packet to the State; and noted that the maps indicate the location of the conservation lands that are currently affected through the action of providing the existing designation and the designation post action. Community Development Planning Director Paul S. O'Connor stated that this is a technical requirement of the rule, and does not change anything that was included in the amendment.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**C. CPA 2001-22**

Amend the Future Land Use Map Series, Map 12, the Water Dependent Overlay (WDO) Zones, by evaluating and updating the status of the overlay areas and the Goals, Objectives, and Policies that pertain to the WDO.

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.----- PAGE:

43

RECOMMENDATIONS:

The Board's recommendation for CPA 2001-22 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**D. CPA 2001-23**

Evaluate and amend the Future Land Use Map series, Map 20, the Agricultural Overlay and Goal 9, Agricultural Land Uses, and its subsequent objectives and policies.

RECOMMENDATIONS:

The Board's recommendation for CPA 2001-23 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**E. CPA 2001-24-T**

Update Table 2(b), Recommended Operational Improvements on Constrained Roads.

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-24 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**F. CPA 2001-31**

Amend Policy 80.1.7 of the Conservation and Coastal Management Element by updating the policy to reflect a new percentage for replacement values and revising the target date when development regulations will require implementation of this policy.

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-31 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**G. CPA 2001-32**

Amend the Intergovernmental Coordination Element and the Community Facilities Element to bring the elements into compliance with the provisions of F.S. Chapter 163.3177.

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.----- PAGE: 44

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-32 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**H. CPA 2001-33**

Amend the Build Back Policy of the Procedures and Administration Element by replacing references to the term "cost" with the term "value".

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-33 was sent to the Department of Community Affairs (DCA) on September 19, 2002.



The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**I. CPA 2001-35**

Review all elements of the Lee Plan, and replace, where applicable, references to the Lee County Regional Water Supply Authority with Lee County Utilities or the Division of Natural Resources in conjunction with the County taking over the responsibilities of the Water Supply Authority.

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-35 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried.

**6. Adopt an Ordinance which adopts the Consent Agenda items**

Commissioner Albion moved approval, seconded by Commissioner Janes, called and carried. The Ordinance adopted by the Board and filed was LEE COUNTY ORDINANCE NO. 03-04, ENTITLED:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE LAND USE PLAN, COMMONLY KNOWN AS THE "LEE PLAN" ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENTS APPROVED ON THE CONSENT AGENDA DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

**7. Administrative Agenda - Lee Plan Amendments Adoption**

**A. CPA 2001-12-M/T**

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.-----PAGE:

45

Modify Policy 1.3.8 to create specific access management plans for Alico Road, Bonita Beach Road, and Lockett Road in the vicinity of I-75 (follow-up to PAT 99-27). In addition, include access management maps in the Future Land Use Map series.

**RECOMMENDATIONS:**

The Board's recommendation for CPA 2001-12 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation can be found on page12 of the CPA 2001-12-M/T BOCC Public Hearing Document.

DOT Deputy Director David Loveland stated that there was one point of contention from property owners between Oriole Road and Three Oaks Parkway; mentioned that Staff is proposing a directional median opening to allow a left in and left out on the south side of Alico Road, with no connection to the north parcels; and remarked that the property

owners asked that the County consider allowing access to the north property. After stating that the Board's direction was to continue working on the issue, [Mr. Loveland](#) notified the Board that, after evaluating the situation, Staff has determined that adding an access to the north will not create additional problems as long as the median opening remains unsignalized; and stated that once there is a problem and signalization is required, than the median opening would be modified to restrict movement rather than allowing a signal, as signals are expected at Three Oaks Parkway and Oriole Road. Commissioner Judah commented that it is difficult to restrict movement once it has already been allowed. [Mr. Loveland](#) noted that the proposed language (page 12 of 13) clearly specifies that the County reserves the right to restrict further movement to address a problem; and that Staff has notified everyone from the standpoint that any median opening locations identified as operational issues are subject to Staff review and determination. [Assistant County Attorney Timothy Jones](#) stated that the Board has the preliminary authority to adjust median openings based on operational issues, especially when language is provided that allows openings with notification to the people that they may be removed in the future. [Mr. Loveland](#) supported Staff's recommendation. The Chairman called for public input; however, no one came forward. Commissioner Albion moved the item, seconded by Commissioner Coy, called and carried.

**B. Adopt an Ordinance which adopts CPA 2001-12-M/T**

The Ordinance adopted by the Board action above and filed was [LEE COUNTY ORDINANCE NO. 03-05](#).  
ENTITLED:

AN ORDINANCE AMENDING THE [LEE COUNTY COMPREHENSIVE PLAN](#), COMMONLY KNOWN AS THE "[LEE PLAN](#)", ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA 2001-12 (PERTAINING TO THE CREATION OF SPECIFIC ACCESS MANAGEMENT PLANS FOR ALICO ROAD, [BONITA BEACH ROAD](#), AND LUCKETT ROAD IN THE VICINITY OF I-75 AND TO INCLUDE ACCESS MANAGEMENT MAPS IN THE FUTURE LAND USE MAP SERIES) APPROVED DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND ACCESS MANAGEMENT MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "[THE LEE PLAN](#)"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

**C. [CPA 2001-27](#)**

Amend [Community Facilities and Services Element](#), Goal 40: Coordinated Surface Water Management and Land Use Planning on a Watershed Basis to add a new Objective and Policy regarding incorporation of green infrastructure into the surface water management systems of proposed developments, and provide definitions for green infrastructure and flow-way in the Glossary.

RECOMMENDATIONS:

The Board's recommendation for CPA 2001-27 was sent to the [Department of Community Affairs \(DCA\)](#) on September 19, 2002.

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.----- PAGE:

46

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections or recommendations to the revised language resulting from a number of meetings. DCA's comment can be found on page 10 of the CPA 2001-27 BOCC Public Hearing Document.

Staff's recommendation can be found on page 10 of the CPA 2001-27 BOCC Public Hearing Document.

Senior Environmental Planner Kim Trebatoski reviewed a [handout](#) (copy on file in the Minutes Office); mentioned that Staff has worked to rectify the complaints that the [Community](#) had not been involved in the drafting of the language; and noted that [South Florida Water Management District \(SFWMD\)](#) and [Department of Environmental Protection \(DEP\)](#) have helped to revise the flow-ways definition and support the amendment. She continued by stating that Staff clarified the intent of Policy 40.5.3 with the following language: "The County encourages the preservation of existing **natural** flow-ways and the restoration of historic flow-ways."; clarified that Policy 40.5.1, were it refers to retention lakes, should be changed to retention/detention lakes; that Policies 40.5.4 and 40.5.5 are



additions to the language that have been transmitted to [Department of Community Affairs \(DCA\)](#) and are a result of the concerns regarding flow-ways, future regulations, incentives, and interaction with SFWMD and DEP in regard to projects; and mentioned that Staff tried to alleviate some concerns regarding the "broad" flow-ways definition by including examples under each of the definitions (see [handout](#)). After noting that there were comments that the data and analysis were not adequate, [Ms. Trebatoski](#) confirmed that DCA was satisfied with the data and analysis; noted that Staff has committed to working more directly with the [Community](#) in the future; and mentioned that those citizens opposing approval have stated that this is a good amendment. Commissioner Coy asked whether it was possible to have a man-made natural flow-way. [Ms. Trebatoski](#) replied that it correct for man-made is naturalized flow-way, and that naturalized means that it has started to take on the natural eco-system characteristics, but that it was not an existing natural flow-way. Natural Resources Director Roland Ottolini stated that this amendment meets the majority of the concerns, noted that this is consistent with the work on a regional scale in the County, and mentioned that this is part of the regional water management and the mitigation plan process. The Chairman called for public input; and the following persons came forward in support of the amendment:

Buckingham Resident [John Cassani](#)  
 Conservancy of Southwest Florida representative [Matt Bixler](#); also read a letter from Ecosystem Specialists Consulting Ecologist [Rae Ann Wessel](#) (copy of [letter](#) on file in the Minutes Office)

Alva Resident [Susan Brookman](#)  
[Eugene Boyd](#), representing the Responsible Growth Management Coalition

The following person came forward to oppose and request deferral of the amendment:

WilsonMiller Planning Services Director [Richard Woodruff](#)

The following individuals came forward to express concerns, offer suggestions, and/or request additional information:

[Lee County Economic Development Coalition President](#) [Patrick Day](#)  
 Vanasse Daylor, LLP [Environmental Sciences Director](#) [Ilene Barnett](#)  
 Real Estate Investment Society Former [President Attorney](#) [Neale Montgomery](#), of the law firm of Pavese, Haverfield, et al., representing the members and groups  
[Bonita Bay Group representative](#) [Mitch Hutchcraft](#)  
[Attorney Steven C. Hartsell](#), of the law firm of Pavese, Haverfield, et al., representing [U.S. Homes Corporation](#)

The following individual submitted a speaker card, but did not speak:

Real Estate Investment Society (REIS) Advisory Committee member [Tracy Hayden](#)

Among the concerns expressed by the citizens were: the lack of technical background or expertise concerning the flow-way definition; the need to clarify the meaning of "encourage" in Policy 40.5.2; the need to balance the impact that the amendment would have on private property owners; and the need to balance the cost factors with the need to protect the environment and address the water quality and flood control issues. Several citizens suggested that the Board emphasize the language "encourage preservation" until the Land Development Code (LDC) is written; that the Board appoint a Committee with the expertise to develop the LDC and the technical standards of a flow-way; that the Board direct Staff to encourage and not require developers to incorporate flow-ways; that the policies not be

implemented until specific LDC regulations are presented to guide private property owners; and that the following provision be modified or deleted: "Natural flow-way can be a series of lower elevation upland areas that connect otherwise isolated wetlands". Other suggestions were: defining wetland systems in Policy 40.5.2; adding the critical flow-ways that need restoration or protection on the map; deferring the adoption of the amendment to address details

-----APPROVED MINUTES OF 010903CP.DOC-----

BOOK - 2003R - B.O.C.C.----- PAGE:

47

in the LDC; clarifying that this is not a self-implementing regulation; and deleting Policy 40.5.2 and 40.5.3, as Policy 40.5.1 suggests the same provision. During [Attorney Montgomery](#)'s comments, Commissioner Judah asked whether she was suggesting that the Board incorporate vegetation and hydrology in the natural flow-way. [Ms. Montgomery](#) opined that all possible criteria be reviewed when determining a wetland. [Ms. Trebatoski](#) addressed the public's comments; stated that Staff conducted scientific evaluations and has reviewed information from topographical maps to [Florida Land Use Cover and Classification System \(FLUCCS\)](#) maps; and disagreed that County Staff comes up with areas that are flow-ways that other agencies would not consider flow-ways. She mentioned that there are flow-ways in the County that contain wetlands such as Six Mile Cypress Slough; and expressed hope that Staff has brought a balanced approach and encouraged best management practices that do not cost the entire [Community](#) in retrofitting later on. [Ms. Trebatoski](#) clarified that there is mapping available on the internet. Commissioner Judah noted that



everyone agrees with the importance of protecting natural flow-ways, and asked whether the private sector could be included when making a determination on how to determine and implement the flow-way protection policy. Assistant County Attorney Timothy Jones stated that there are many problems with appointing Committees, suggested that the Board direct Staff to pursue public workshops with all available experts and proper notification to the public to bring back a set of amendments, and mentioned that if the Board chooses to appoint a Committee the Sunshine Law would have to be applied. He added that Staff should solicit all the input to form a draft to report to the Board. Commissioner Judah asked if the Board could expedite the timing to the LDC. Attorney Jones noted there was no problem with expediting the amendments, and that this item could be handled separately. Commissioner Albion expressed his opinion that the flow-way situation should be understood and predictable, and noted that appointing the Committee would be a progress in the process. Commissioner Janes thanked Ms. Trebatoski and Community Development Planning Director Paul S. O'Connor for the language revisions, noted that the amendment should be further evaluated and revised at the LDC, and expressed support for the adoption of the amendment. Commissioner Judah stated that Staff should expedite the timeframe. Attorney Jones suggested adding the following language to address Attorney Montgomery's concern of the natural flow-way definition (fourth line): "...determined through reasonable scientific judgment utilizing **all available information including without limitation a review of all of the following** :...". After Commissioner Judah and Attorney Jones's comments, Mr. Noble stated that hydrology and vegetation are typical information that Staff uses in the FLUCCS mapping; and pointed out that there are portions of the County where there are a lot of flow-ways that cross upland and are seasonal in nature. Commissioner Judah noted that those are factors included in the deliberation, but that all information is considered; and inquired whether there was any foreseeable problems with incorporating vegetation and hydrology. Brief discussion was held between Commissioners Coy and Judah regarding the language in Policy 40.5.5 pertaining to incentives/credits, and the need to clarify the meaning in Policies 40.5.1, 40.5.2, and 40.5.3. Commissioner Janes reiterated that the language could be worked out at the LDC. Commissioner Coy commented on the self-implementing regulations. Attorney Jones stated the purpose of the amendment is to define a flow-way. Commissioner Coy asked about the timeframe for the LDC to come back before the Board. Attorney Jones stated that six months would be reasonable, and Commissioner Judah noted that the timeframe would include the workshops. Commissioner Albion stated that Staff can report to the Board at the May Management and Planning (M&P) meeting. Brief discussion was held between Commissioners Judah, Coy, and Albion and Attorney Jones regarding possible conflict of interest with a Committee. Commissioner Albion moved to adopt the amendment with the understanding that, especially noted in Policies 40.5.1, 40.5.2, and 40.5.3, the key word being encourages; and understanding that the existing policies that are in place must be necessarily adhered to. Attorney Jones added that the definition of natural flow-ways and the information of vegetation and hydrology should be included in the motion. Commissioner Albion added that the language submitted by Attorney Jones with the addition of vegetation and hydrology in that definition, although not limited to, is part of the motion. Commissioner Judah noted that the six-month timeframe should be approved in a separate motion. Commissioner Janes seconded the motion. Mr. O'Connor noted that the clarification on retention/detention should be included in the motion. Commissioner Albion added that the motion include the handout dated January 9, **2003**. The motion was called and carried. Commissioner Coy moved that within six months Staff bring back a specific Comprehensive Plan amendment pertaining specifically to the definition of flow-ways. After adding that Staff update the Board at an M&P meeting, Commissioner Albion seconded the motion. The motion was called and carried.

#### D. Adopt an Ordinance which adopts CPA 2001-27

The Ordinance adopted by the Board action above and filed was LEE COUNTY ORDINANCE NO. 03-06.  
ENTITLED:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN", ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA 2001-27 (PERTAINING TO THE ADDITION OF A NEW OBJECTIVE AND POLICY UNDER GOAL 40 REGARDING THE INCORPORATION OF GREEN INFRASTRUCTURE INTO THE SURFACE WATER MANAGEMENT SYSTEMS OF PROPOSED DEVELOPMENTS AND TO THE ADDITION OF TWO DEFINITIONS TO THE GLOSSARY FOR "GREEN INFRASTRUCTURE" AND "FLOW-WAY") APPROVED DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN

-----APPROVED MINUTES OF 010903CP.DOC-----

AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

#### E. CPA 2001-28



Amend the Capital Improvements Element (Tables 3 and 4) to reflect the latest adopted Capital Improvement Program.

RECOMMENDATIONS:

The Board's recommendation for CPA 2001-28 was sent to the Department of Community Affairs (DCA) on September 19, 2002.

The DCA's ORC Report, dated November 22, 2002, stated that DCA had no objections, recommendations, or comments concerning this amendment.

Staff's recommendation is to adopt the amendment as transmitted.

Planning Division Planner Peter Blackwell reviewed the request. Commissioner Coy moved the item, seconded by Commissioner Albion. Mr. Blackwell noted that the revised tables contain those elements voted on at the public hearing in September. The Chairman called for public input; however, no one came forward. The motion was called and carried.

**F. Adopt an Ordinance which adopts CPA 2001-28**

The Ordinance adopted by the Board action above and filed was LEE COUNTY ORDINANCE NO. 03-07, ENTITLED:

AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN", ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA 2001-28 (PERTAINING TO TABLES 3 AND 4 OF THE CAPITAL IMPROVEMENT ELEMENT) APPROVED DURING THE COUNTY'S 2001/2002 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR AMENDMENTS TO ADOPTED TEXT AND MAPS; PURPOSE AND SHORT TITLE; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

At this time, Chairman Judah thanked Staff and the County Attorney's Office for their hard work.

The Chairman adjourned the meeting at 1:10 p.m.

ATTEST:  
CHARLIE GREEN, CLERK

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Chairman, Lee County Commission

-----APPROVED MINUTES OF 010903CP.DOC-----