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**CPA 2000-31
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Adoption Document

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585*

January 10, 2002

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2000-31**

Text Amendment **Map Amendment**

<input checked="" type="checkbox"/>	This document contains the following reviews:
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input checked="" type="checkbox"/>	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
<input checked="" type="checkbox"/>	Board Of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: June 18, 2001

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING AND THE LEE
COUNTY ATTORNEYS OFFICE

2. REQUEST:

Amend Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and aviation easements to Lee County within noise zones 2 and 3. Also amend the Lee Plan by deleting Policy 32.2.6. pertaining to the Aviation Easements Program. In addition, amend the Lee Plan Glossary by removing the definition of the term aviation easement as it will no longer apply in the Lee Plan.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term “avigation easement” from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner’s legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor’s property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor’s property.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The proposed amendment does not change any Airport Noise Zones, zoning categories, or Future Land Use categories.
- Inappropriate land uses near the airport are already addressed by existing land use regulations.
- The term “avigation easement” appears only in Lee Plan Policies 1.7.1, 32.2.6, and the Lee Plan Glossary.

C. BACKGROUND INFORMATION

The proposed amendment was initiated at the request of the Lee County Attorneys Office because concerns about inappropriate land uses in the Airport Noise Zones are already addressed by existing land use regulations.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Currently, Lee Plan Policy 1.7.1 requires all development in Airport Noise Zones 2 and 3 to sign a document dedicating an aviation easement on the property to Lee County. This easement grants Lee County property rights pertaining to the airspace above the owners property and waives possible claims for damages resulting from the operation of aircraft over the subject property. The easement must be granted prior to the issuance of any building permits or development orders.

Lee Plan Policy 32.2.6 implements the aviation easement program referred to in policy 1.7.1.

In a memorandum dated May 30, 2001, the Lee County Attorney's Office requested that Lee Plan Policy 1.7.1 be deleted (Attachment 1). The Attorney's Office also requested that the term "Aviation Easement" be deleted from the Lee Plan Glossary. The County Attorney's office also requested the deletion of Policy 32.2.6.

TRANSPORTATION ISSUES

Removing the aviation easement requirement neither increases nor decreases the traffic trip generation in the Airport Noise Zones. Therefore, it has no effect on traffic volumes or the transportation infrastructure.

PUBLIC SAFETY ISSUES

EMS and Fire Protection Services

The proposed amendment does not create or remove any residential units in the Airport Noise Zones. Consequently, it does not increase or decrease the demand on EMS or Fire Protection Services.

Hurricane Evacuation

As the removal of the aviation easement requirement would not add or subtract any residents to the Airport Noise Zones, the proposed amendment has no effect on hurricane evacuation times. It also has no effect on the number of evacuating people and vehicles or the amount of needed hurricane shelter space.

UTILITIES

The proposed amendment does not create any additional demand for either potable water or sanitary sewer service. Consequently, it has no effect on utility providers.

ENVIRONMENTAL ISSUES

The proposed amendment creates no environmental concerns.

DEVELOPMENT ISSUES

The proposed amendment does not increase or limit the permitted number of residential units or commercial space within the Airport Noise Zones. Therefore, it has no effect on either development intensity or residential density in the Airport Noise Zones.

POPULATION ACCOMMODATION

The proposed amendment does not change the population accommodation of the Airport Noise Zones.

HISTORIC PRESERVATION ISSUES

The proposed amendment creates no historic preservation concerns.

B. CONCLUSIONS

The proposed amendment has no effect on existing or future land uses.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term "avigation easement" from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC LPA HEARING: June 25, 2001

A. LOCAL PLANNING AGENCY REVIEW

There was no discussion by the LPA.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

The LPA recommended the Board of County Commissioners transmit this amendment that modifies Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements, amends the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program and amends the Lee Plan Glossary by removing the definition of the term "avigation easement."

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	<u>Aye</u>
SUSAN BROOKMAN	<u>Aye</u>
BARRY ERNST	<u>Aye</u>
RONALD INGE	<u>Absent</u>
GORDON REIGELMAN	<u>Aye</u>
VIRGINIA SPLITT	<u>Absent</u>
GREG STUART	<u>Aye</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: August 29, 2001

A. BOARD REVIEW: One commissioner asked if this amendment was necessary. The commissioner said that he felt that the avigation easement purchases provided the legal protection that the county needed from noise lawsuits. The County Attorneys stated that the proposal was recommended by the litigation department due to litigation that could have large impacts on the county. The attorney's office also said that the Airport Noise Zones will limit the types of development that would be negatively affected by airport noise. The attorney's office also stated that sellers of property in the Noise Zones should be required to inform potential buyers of the pertinent regulations.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board of County Commissioners voted to transmit the proposed plan amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact advanced by staff and the LPA.

C. VOTE:

JOHN ALBION	<u>AYE</u>
ANDREW COY	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: November 21, 2001

- A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS:**
The DCA had no objections, recommendations, or comments concerning this amendment.
- B. STAFF RESPONSE**
Adopt the amendment as transmitted.

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: January 10, 2002

- A. BOARD REVIEW:** The Board of County Commissioners provided no discussion concerning the proposed plan amendment.
- B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:**
- 1. BOARD ACTION:** The Board of County Commissioners voted to adopt the proposed plan amendment. This item was approved on the consent agenda.
 - 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact advanced by staff and the LPA.
- C. VOTE:**

JOHN ALBION

Aye

ANDREW COY

Absent

RAY JUDAH

Aye

BOB JANES

Aye

DOUG ST. CERNY

Aye

LEE COUNTY
RECEIVED

01 MAY 31 AM 10:10

COMM. DEV/
PUB. WORKS. CNTR.
SECOND FLOOR

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 30 2001

To: Paul O'Connor
Director, Planning Division

FROM:


Donna Marie Collins
Assistant County Attorney

RE: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

Pursuant to the attached memorandum from John Renner of the Litigation Division of the County Attorney's Office, we wish to amend the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an aviation easement in areas adjacent to the airport. We should also amend the Glossary to delete the definition of aviation easement.

John Renner has rendered an opinion that there could potentially be a rational nexus problem in some instances since there is no provision for a variance from the requirement of the dedication prior to the issuance of a building permit. In addition, he has opined that since the concerns regarding inappropriate uses of land near the airport are already addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary. Tim has requested that I follow up on John Renner's request that the Land Development Code and Lee Plan be revised to delete the dedication requirements. Accordingly, we request that the Planning Division prepare a bluesheet requesting the Board to include such an amendment to the Plan as part of the current round of Lee Plan Amendments.

By copy of this memorandum, I request that John Fredyma and Bob Gurnham note that Land Development Code Sections 34-1006(b)(2)a. and (b)(3) specifically require the dedication of an aviation easement as a condition of subdivision approval or the issuance of a building permit. Land Development Code Section 34-1003 (Definitions) includes the definition of aviation easement. These sections should be revised consistent with this memorandum. Kindly ensure that amendments to these sections are included in the Fall package of Land Development Code amendments.

If I may be of any assistance with regard to the above, do not hesitate to contact me.

DMC/amp

Attachment: John Renner's memorandum dated May 8, 2001

Paul O'Connor
May 30, 2001
Page 2

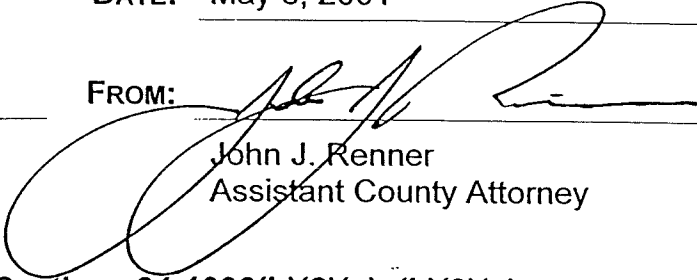
Re: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

cc: Timothy Jones, Assistant County Attorney
John Renner, Assistant County Attorney
John Fredyma, Assistant County Attorney
Mary Gibbs, Director, Department of Community Development
Robert Gumham, Principal Planner, Development Services Division
Matt Noble, Planner, Planning Division

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: May 8, 2001

To: TIM JONES
Assistant County Attorney

FROM: 
John J. Renner
Assistant County Attorney

RE: **Lee County Development Code Sections 34-1006(b)(2)(a), (b)(3)(a)**

Sections 34-1006(b)(2)(a) and (b)(3)(a) require the dedication of avigation easements as a condition to subdivision approval or the issuance of a building permit. There is no provision for a variance from this requirement should an applicant wish to question the rational nexus between the dedication and the permit or approval. Moreover, since the concern over inappropriate uses of land close to the airport can, and are, addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary.

I would request the Board amend the Land Development Code to delete the mandatory dedication requirements.

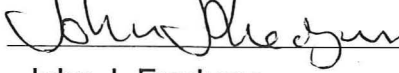
JJR:bg

File CPA2000-31

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: December 3, 2001

To: William Horner
Principal Planner
Lee County Port Authority

FROM: 
John J. Fredyma
Assistant County Attorney

**RE: Removal of Lee County Land Development Code (LDC)
requirement for Avigation Easements**

On November 13, 2001, the Lee County Board of County Commissioners approved Lee County Ordinance No. 01-18. After Board approval, an original of the Ordinance was sent to Tallahassee where it was received on November 21, 2001. Ordinance No. 01-18 became effective upon its receipt and filing in the Office of the Secretary of the Florida Department of State.

Included within Ordinance No. 01-18 was Port Authority requested changes to LDC §34-1006(b)(2)a and (b)(3)a. In particular, requirements for the dedication of all avigation easements were deleted from both subsections. A copy of the pertinent portion of Ordinance No. 01-18 showing these changes has been attached for your benefit.

On November 15, 2001, I attended a meeting with you, Jamie McCormick, Greg Hagen and Richard Alberts (a Port Authority consultant). In that meeting we again spoke about avigation easements and possible alternatives to achieve a similar purpose without effecting a taking of property rights or value. Unfortunately, I believe I may have made an incorrect statement in that meeting when I indicated the just-approved round of LDC amendments removed the requirement for a property owner to give the County an avigation easement when applying for a building permit in either Noise Zone 2 or 3, but the amendment left intact the requirement of a developer to dedicate an avigation easement on the face of any new plat that includes land within either of the two noise zones. My most recent review of the changes effected to LDC §34-1006 would indicate all requirements for avigation easements have now been removed from the LDC. My concern is this may not have been the intended result of the Port Authority's requested amendment(s). You may recall that I raised this issue in earlier discussions and e-mails back in July, but draft text approved by the Port Authority included the removal of all avigation easement requirements from LDC §34-1006. Additionally, more recent discussions on this topic immediately before the final draft of the proposed LDC amendments went to public hearing leaves some uncertainty with respect to the issue.

I attended two short seminars last week to update County Staff with regard to changes to the LDC as a result of the adoption of Ordinance No. 01-18. In one of those seminars, County Planning Staff stated that avigation easements remain a requirement of the Lee Plan; therefore, Development Services staff should still be requesting avigation easements in conjunction with building permit applications or new plats of property located within both Noise Zone 2 and 3.

William Horner
December 3, 2001
Page 2

Re: Removal of Lee County Land Development Code (LDC)
requirement for Avigation Easements

Planning Staff further stated this requirement will remain intact until such time as the Comprehensive Plan is amended to remove the requirements - something slated to occur in the next month or so.

In light of my most recent review of the text of the adopted amendment to LDC §34-1006 (and our discussions at the November 15th meeting), I am somewhat unsure if the removal of all avigation requirements from the LDC was the intended result of the Port Authority's requested amendment of LDC §34-1006. Please review the attached amendment and let me know what you think.

/jjf
Attachment

cc: John Renner, Chief Assistant County Attorney (Litigation)
Greg Hagen, Assistant Port Authority Attorney
Timothy Jones, Chief Assistant County Attorney (Land Use)
Mary Gibbs, Director, Department of Community Development
Paul O'Connor, Director, Planning Department
Robert Gurnham, Principal Planner, Development Services Division

LEE COUNTY
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01 DEC -4 AM 9:20
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SECOND FLOOR

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
Office of the Secretary
Division of Administrative Services
Division of Corporations
Division of Cultural Affairs
Division of Elections
Division of Historical Resources
Division of Library and Information Services
Division of Licensing
MEMBER OF THE FLORIDA CABINET



HISTORIC PRESERVATION BOARDS
Historic Florida Keys Preservation Board
Historic Palm Beach County Preservation Board
Historic Pensacola Preservation Board
Historic St. Augustine Preservation Board
Historic Tallahassee Preservation Board
Historic Tampa/Hillsborough County
Preservation Board
RINGLING MUSEUM OF ART

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS

November 26, 2001

Honorable Charlie Green
Clerk of Circuit Court
Lee County
Post Office Box 2469
Ft. Myers, Florida 33902-2469

Attention: Ruth Frymier, Deputy Clerk

Dear Mr. Green:

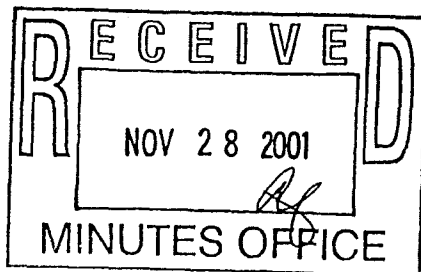
Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated November 19, 2001 and Lee County Ordinance Nos. 01-15 through 01-19, which were filed in this office on November 21, 2001.

Sincerely,

A handwritten signature in black ink that reads "Liz Cloud" followed by the initials "AK".

Liz Cloud, Chief
Bureau of Administrative Code

LC/mp



BUREAU OF ADMINISTRATIVE CODE

The Collins Building • 107 West Gaines Street • Tallahassee, Florida 32399-0250 • (850) 245-6270
FAX: (850) 245-6282 • WWW Address: <http://www.dos.state.fl.us> • E-Mail: election@mail.dos.state.fl.us

LEE COUNTY ORDINANCE NO. 01-18

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTERS 2, 10, 14, 30 AND 34; AMENDING CHAPTER 2 (ADMINISTRATION); AMENDING DEFINITIONS AND RULES OF CONSTRUCTION (§2-264); IMPACT MITIGATION (§2-485); AND

AMENDING CHAPTER 10 (DEVELOPMENT STANDARDS); AMENDING PROVISIONS AND RENAMING INTERPRETATION OF CHAPTER TO INTERPRETATION AND REGULATORY INTENT OF CHAPTER (§10-3); AMENDING GENERAL REQUIREMENTS (§10-7); VIOLATION OF DEVELOPMENT ORDER (§10-122); EXTENSIONS (§10-123); ADDITIONAL REQUIRED SUBMITTALS (§10-154); FINAL INSPECTIONS AND CERTIFICATE OF COMPLIANCE (§10-183); AMENDING AND RENUMBERING BIKEWAYS AND PEDESTRIAN WAYS (§10-256); AMENDING FUNCTIONAL CLASSIFICATION OF COUNTY ROADS (§10-284); AMENDING AND PROVIDING FOR ADDITIONAL PROVISIONS TO STREET DESIGN AND CONSTRUCTION STANDARDS (§10-296); AMENDING CONTROLLED ACCESS ROADS (§10-298); LANDSCAPE STANDARDS (§10-416); PLANT INSTALLATION AND MAINTENANCE STANDARDS (§10-421); AMENDING PROVISIONS AND RENAMING APPLICABILITY AND EFFECTIVE DATE TO APPLICABILITY (§10-602); AND

AMENDING CHAPTER 14 (ENVIRONMENT AND NATURAL RESOURCES); AMENDING RESTORATION STANDARDS (§14-384); RESTORATION STANDARDS (§14-454); AND

AMENDING CHAPTER 30 (SIGNS); AMENDING DEFINITIONS AND PROVIDING FOR DEFINITION OF "BUS SHELTER SIGN" (§30-2); RENUMBERING AND AMENDING PROHIBITED SIGNS (§30-5); RENUMBERING AND AMENDING PERMITTED SIGNS (§30-6); AMENDING PERMITS; INSPECTIONS (§30-54); PERMANENT SIGNS IN RESIDENTIAL AREAS (§30-152); AMENDING AND RENAMING BENCH SIGNS TO BENCH SIGNS AND BUS SHELTER SIGNS (§30-182); AND

AMENDING CHAPTER 34 (ZONING); AMENDING, PROVIDING FOR OR REMOVING DEFINITIONS OF "ANIMAL KENNEL", "ANIMALS, CLASS I", "ANIMALS, CLASS II", "AUTOMOBILE SERVICE STATION", "BED AND BREAKFAST ESTABLISHMENT", "GARAGE", "GARAGE, PRIVATE", "GARAGE, PUBLIC", "LOCK-OFF ACCOMMODATIONS", "MARINA", "MARINA ACCESSORY USES", "MINING", "MINI-WAREHOUSE", "SURVEYOR OR PROFESSIONAL SURVEYOR AND MAPPER", "TIMESHARE UNIT", "TRUCK FARM", "WATER-DEPENDENT USES", "WATER-RELATED USES", "WAREHOUSE, PUBLIC" (§34-2); AMENDING AND RENAMING INTERPRETATION TO INTERPRETATION AND REGULATORY INTENT OF CHAPTER (§34-5); AMENDING GENERAL PROCEDURE FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-201); AMENDING, REMOVING AND PROVIDING FOR GENERAL SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (§34-202); AMENDING DEFERRAL OR CONTINUANCE OF PUBLIC HEARING (§34-235); AMENDING AND RENUMBERING APPLICATION (§34-373); AMENDING USE REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (§34-653);

USE REGULATIONS TABLE FOR MULTIPLE-FAMILY DISTRICTS (§34-714); USE REGULATIONS TABLE FOR COMMUNITY FACILITIES (§34-813); USE REGULATIONS TABLE FOR CONVENTIONAL COMMERCIAL DISTRICTS (§34-843); USE REGULATIONS TABLE FOR MARINE-ORIENTED DISTRICTS (§34-873); AMENDING AND PROVIDING FOR PURPOSE AND INTENT FOR INDUSTRIAL DISTRICTS (§34-901); USE REGULATIONS TABLE FOR INDUSTRIAL DISTRICTS (§34-903); PURPOSE AND INTENT FOR PLANNED DEVELOPMENTS (§34-931); USE REGULATIONS TABLE FOR PLANNED DEVELOPMENT DISTRICTS (§34-934); AMENDING REDEVELOPMENT OVERLAY DISTRICTS DEFINITIONS OF "COMPONENT PLAN" (§34-1081), AMENDING AIRPORT NOISE ZONES (§34-1006); AMENDING MODIFIED LAND DEVELOPMENT REGULATIONS, MASTER SITE PLAN (NORTH TAMiami TRAIL REDEVELOPMENT OVERLAY DISTRICT) (§34-1124); REMOVING PROVISIONS OF THE BONITA SPRINGS REDEVELOPMENT OVERLAY DISTRICT PURPOSE AND INTENT (§34-1133); REMOVING ELEMENTS OF THE REDEVELOPMENT OVERLAY DISTRICT (§34-1134); REMOVING THE MASTER PLANS (§34-1135); REMOVING LIMITATIONS ON APPROVALS (§34-1136); REMOVING MODIFIED LAND DEVELOPMENT REGULATIONS (§34-1137); REMOVING PROCEDURES FOR APPROVAL AND APPEALS OF ADMINISTRATIVE DECISIONS (§34-1138); AMENDING AND RENUMBERING RESERVED PROVISIONS §§34-1139 - 34-1140 TO §§34-1133 - 34-1140 (§34-1139); AMENDING AND RENUMBERING DEVELOPMENT REGULATIONS (§34-1173); AMENDING ACCESSORY APARTMENTS (§34-1177); AMENDING AND PROVIDING EXCEPTIONS FOR TRUCKS AND COMMERCIAL VEHICLES IN RESIDENTIALLY AND AGRICULTURALLY ZONED DISTRICTS (§34-1181); AMENDING AND PROVIDING FOR DISPLAY, SALE, RENTAL OR STORAGE FACILITIES FOR MOTOR VEHICLES, BOATS, RECREATIONAL VEHICLES, TRAILERS, MOBILE HOMES OR EQUIPMENT (§34-1352); DENSITY EQUIVALENTS (§34-1494); COASTAL ZONES (§34-1575); CONSTRUCTION OF FENCES (§34-1742); LOCATION AND HEIGHT OF FENCES AND WALLS OTHER THAN RESIDENTIAL PROJECT FENCES (§34-1744); AMENDING AND RENUMBERING ENTRANCE GATES AND GATEHOUSES (§34-1748); AMENDING AND PROVIDING FOR DEFINITIONS (MODEL HOMES, UNITS AND DISPLAY CENTERS) OF "MODEL DISPLAY GROUP" (§34-1952); AMENDING AND PROVIDING FOR MODEL HOMES AND MODEL UNITS (§34-1954); AMENDING MODEL DISPLAY CENTERS (§34-1955); PROVIDING FOR MODEL DISPLAY GROUP (§34-1956); AMENDING AND RENUMBERING RESERVED PROVISIONS §§34-1956 - 34-1980 TO §§34-1957 - 34-1980 (§34-1956) AMENDING REQUIRED SPACES (§34-2020); AMENDING AND PROVIDING FOR HEIGHT LIMITATIONS FOR SPECIAL AREAS (§34-2175); AMENDING STREET SETBACKS (§34-2192); SETBACKS FROM BODIES OF WATER (§34-2194); REMOVING BONITA SPRINGS CRA REDEVELOPMENT OVERLAY DISTRICT BOUNDARIES (APPENDIX I); AND

PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code, which contains regulations applicable to the development of land in Lee County; and

DIVISION 10. SPECIAL PURPOSE DISTRICTS

Subdivision II. Airport Hazard Districts

Sec. 34-1006 Airport noise zones.

(a) unchanged.

(b) Noise zones defined; permitted uses. There are hereby created and established four airport noise zones pertaining to land uses surrounding the Southwest Florida International Airport based upon the DNL contours for airport noise developed in accordance with the Federal Aviation Regulations, Part 150, Noise Compatibility Study for the Southwest Florida International Airport, as adopted by the Board of County Commissioners and on file at the county port authority. The purpose and intent of these noise zones is to define and set forth specific regulations for all properties within the described areas. These noise zones are set forth as overlay zoning districts in that they provide regulations and restrictions in addition to those set forth in the planned development or conventional zoning districts in which the property is located, as defined in this chapter. Except as otherwise provided in this section, no land, body of water or structure may be used or permitted to be used and no structure may be hereafter erected, constructed, moved, reconstructed or structurally altered or maintained in any of these airport noise zones which is designed, arranged or intended to be used or occupied for any purpose other than as defined in the following:

(2) Zone 3.

a. Zone 3 consists of that area of land generally located between the 65 DNL and the limits of Zone 4 as determined in the adopted Part 150 Southwest Florida International Airport cumulative noise maps. This zone allows any use permitted by this chapter, provided that no residential living units, ~~churches~~ places of worship, libraries, schools, hospitals, correctional institutions or nursing homes are permitted; ~~and provided further that noise and aviation easements over the subject property are dedicated to the county in accordance with this subsection.~~ However, residential units, including mobile homes, that are lawfully existing as of June 27, 2000 will be treated as legally permitted uses and not as nonconforming uses. Lawfully existing mobile or manufactured homes may be replaced with new mobile or manufactured homes or conventional single-family construction and existing conventional single-family homes may be replaced with new conventional homes so long as such replacement would be otherwise allowed by this Code. However, an existing conventional home may not be replaced with a new mobile or manufactured home. One conventional single-family home is permitted on each lot in a plat properly recorded before June 27, 2000 if such use would have been permitted on the lot prior to June 27, 2000. ~~As a condition of approval of a subdivision plat or issuance of a building permit, including any permit for improvement or replacement of lawfully existing residential units, for any property located in zone 3 and zone 2, the applicant must sign and record a noise and aviation easement to the county. Such easement must authorize any and all aircraft noise on and overflights of the property which might occur during the operation of the Southwest Florida International Airport at present and future operational levels. Any~~

~~increase of the DNL level above present and forecast levels will not void such easement or be prevented by such easement.~~

(3) Zone 2:

- a. Zone 2 consists of that area of land generally located between the 60 DNL and the limits of Zone 3 as determined in the adopted Part 150 Southwest Florida International Airport cumulative noise maps. This zone allows any use permitted by this chapter provided that mobile homes may not be permitted ~~and provided further that noise and aviation easements over the subject property are dedicated to the county in accordance with subsection (b)(2)a of this section.~~ However, mobile or manufactured homes that are lawfully existing as of June 27, 2000 will be treated as legally permitted uses and not as nonconforming uses. Lawfully existing mobile homes or manufactured homes may be replaced with new mobile or manufactured homes or conventional single-family construction so long as such replacement would otherwise be allowed by this code. However, an existing conventional home may not be replaced with a new mobile or manufactured home.

DIVISION 11. REDEVELOPMENT OVERLAY DISTRICTS

Subdivision I. General Requirements

Sec. 34-1081. Definitions.

Component plan means a redevelopment plan that examines the conditions and needs and provides redevelopment recommendations for a specific area, i.e., ~~Bonita Springs~~ North Fort Myers, etc., hereinafter referred to as component areas. The plans are a component of the community redevelopment plan, hence the term component plan. The Board of County Commissioners has adopted component plans for ~~Bonita Springs~~, North Fort Myers, San Carlos Island, State Road 80, and Lehigh Acres.

Subdivision IV. The North Tamiami Trail Redevelopment Overlay District

Sec. 34-1124 Modified land development regulations, master site plan.

TABLE 1

LAND USES IN NTTW AND NTTWE SUB-DISTRICTS

Land Uses	Special Notes or Regulations	NTTW	NTTWE
Time share units	34-1494, 34-2020(1)g	P	SE

**CPA 2000-31
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**BoCC Public Hearing Document
for the
January 10th Adoption Hearing**

**Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585**

November 21, 2001

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2000-31**

Text Amendment **Map Amendment**

	This document contains the following reviews:
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
<input checked="" type="checkbox"/>	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board Of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: June 18, 2001

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING AND THE LEE
COUNTY ATTORNEYS OFFICE

2. REQUEST:

Amend Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements to Lee County within noise zones 2 and 3. Also amend the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program. In addition, amend the Lee Plan Glossary by removing the definition of the term avigation easement as it will no longer apply in the Lee Plan.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term “avigation easement” from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property, to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The proposed amendment does not change any Airport Noise Zones, zoning categories, or Future Land Use categories.
- Inappropriate land uses near the airport are already addressed by existing land use regulations.
- The term “avigation easement” appears only in Lee Plan Policies 1.7.1, 32.2.6, and the Lee Plan Glossary.

C. BACKGROUND INFORMATION

The proposed amendment was initiated at the request of the Lee County Attorneys Office because concerns about inappropriate land uses in the Airport Noise Zones are already addressed by existing land use regulations.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Currently, Lee Plan Policy 1.7.1 requires all development in Airport Noise Zones 2 and 3 to sign a document dedicating an aviation easement on the property to Lee County. This easement grants Lee County property rights pertaining to the airspace above the owners property and waives possible claims for damages resulting from the operation of aircraft over the subject property. The easement must be granted prior to the issuance of any building permits or development orders.

Lee Plan Policy 32.2.6 implements the aviation easement program referred to in policy 1.7.1.

In a memorandum dated May 30, 2001, the Lee County Attorney's Office requested that Lee Plan Policy 1.7.1 be deleted (Attachment 1). The Attorney's Office also requested that the term "Avigation Easement" be deleted from the Lee Plan Glossary. The County Attorney's office also requested the deletion of Policy 32.2.6.

TRANSPORTATION ISSUES

Removing the aviation easement requirement neither increases nor decreases the traffic trip generation in the Airport Noise Zones. Therefore, it has no effect on traffic volumes or the transportation infrastructure.

PUBLIC SAFETY ISSUES

EMS and Fire Protection Services

The proposed amendment does not create or remove any residential units in the Airport Noise Zones. Consequently, it does not increase or decrease the demand on EMS or Fire Protection Services.

Hurricane Evacuation

As the removal of the aviation easement requirement would not add or subtract any residents to the Airport Noise Zones, the proposed amendment has no effect on hurricane evacuation times. It also has no effect on the number of evacuating people and vehicles or the amount of needed hurricane shelter space.

UTILITIES

The proposed amendment does not create any additional demand for either potable water or sanitary sewer service. Consequently, it has no effect on utility providers.

ENVIRONMENTAL ISSUES

The proposed amendment creates no environmental concerns.

DEVELOPMENT ISSUES

The proposed amendment does not increase or limit the permitted number of residential units or commercial space within the Airport Noise Zones. Therefore, it has no effect on either development intensity or residential density in the Airport Noise Zones.

POPULATION ACCOMMODATION

The proposed amendment does not change the population accommodation of the Airport Noise Zones.

HISTORIC PRESERVATION ISSUES

The proposed amendment creates no historic preservation concerns.

B. CONCLUSIONS

The proposed amendment has no effect on existing or future land uses.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and aviation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the aviation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term "aviation easement" from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC LPA HEARING: June 25, 2001

A. LOCAL PLANNING AGENCY REVIEW

There was no discussion by the LPA.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

The LPA recommended the Board of County Commissioners transmit this amendment that modifies Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements, amends the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program and amends the Lee Plan Glossary by removing the definition of the term "avigation easement."

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	<u>Aye</u>
SUSAN BROOKMAN	<u>Aye</u>
BARRY ERNST	<u>Aye</u>
RONALD INGE	<u>Absent</u>
GORDON REIGELMAN	<u>Aye</u>
VIRGINIA SPLITT	<u>Absent</u>
GREG STUART	<u>Aye</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: August 29, 2001

A. BOARD REVIEW: One commissioner asked if this amendment was necessary. The commissioner said that he felt that the aviation easement purchases provided the legal protection that the county needed from noise lawsuits. The County Attorneys stated that the proposal was recommended by the litigation department due to litigation that could have large impacts on the county. The attorney's office also said that the Airport Noise Zones will limit the types of development that would be negatively affected by airport noise. The attorney's office also stated that sellers of property in the Noise Zones should be required to inform potential buyers of the pertinent regulations.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board of County Commissioners voted to transmit the proposed plan amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact advanced by staff and the LPA.

C. VOTE:

JOHN ALBION	<u>AYE</u>
ANDREW COY	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: November 21, 2001

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

The DCA had no objections, recommendations, or comments concerning this amendment.

B. STAFF RESPONSE

Adopt the amendment as transmitted.

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: January 10, 2002

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

RAY JUDAH

BOB JANES

DOUG ST. CERNY

LEE COUNTY
RECEIVED

01 MAY 31 AM 10:10

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 30 2001

To: Paul O'Connor
Director, Planning Division

FROM:


Donna Marie Collins
Assistant County Attorney

RE: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

Pursuant to the attached memorandum from John Renner of the Litigation Division of the County Attorney's Office, we wish to amend the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an aviation easement in areas adjacent to the airport. We should also amend the Glossary to delete the definition of aviation easement.

John Renner has rendered an opinion that there could potentially be a rational nexus problem in some instances since there is no provision for a variance from the requirement of the dedication prior to the issuance of a building permit. In addition, he has opined that since the concerns regarding inappropriate uses of land near the airport are already addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary. Tim has requested that I follow up on John Renner's request that the Land Development Code and Lee Plan be revised to delete the dedication requirements. Accordingly, we request that the Planning Division prepare a bluesheet requesting the Board to include such an amendment to the Plan as part of the current round of Lee Plan Amendments.

By copy of this memorandum, I request that John Fredyma and Bob Gumham note that Land Development Code Sections 34-1006(b)(2)a. and (b)(3) specifically require the dedication of an aviation easement as a condition of subdivision approval or the issuance of a building permit. Land Development Code Section 34-1003 (Definitions) includes the definition of aviation easement. These sections should be revised consistent with this memorandum. Kindly ensure that amendments to these sections are included in the Fall package of Land Development Code amendments.

If I may be of any assistance with regard to the above, do not hesitate to contact me.

DMC/amp
Attachment: John Renner's memorandum dated May 8, 2001

Paul O'Connor
May 30, 2001
Page 2

**Re: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments**

cc: Timothy Jones, Assistant County Attorney
John Renner, Assistant County Attorney
John Fredyma, Assistant County Attorney
Mary Gibbs, Director, Department of Community Development
Robert Gumham, Principal Planner, Development Services Division
Matt Noble, Planner, Planning Division

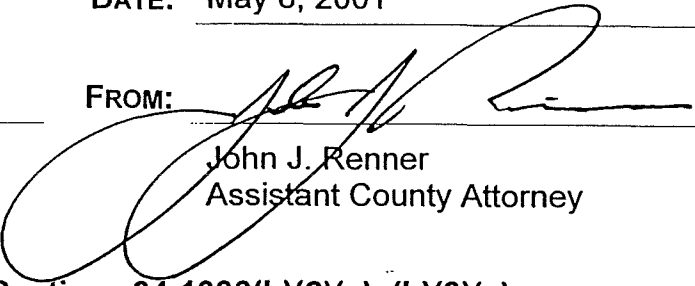
MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 8, 2001

To: TIM JONES

Assistant County Attorney

FROM:


John J. Renner
Assistant County Attorney

RE: Lee County Development Code Sections 34-1006(b)(2)(a), (b)(3)(a)

Sections 34-1006(b)(2)(a) and (b)(3)(a) require the dedication of avigation easements as a condition to subdivision approval or the issuance of a building permit. There is no provision for a variance from this requirement should an applicant wish to question the rational nexus between the dedication and the permit or approval. Moreover, since the concern over inappropriate uses of land close to the airport can, and are, addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary.

I would request the Board amend the Land Development Code to delete the mandatory dedication requirements.

JJR:bg

**CPA 2000-31
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

DCA Transmittal Document

**Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585**

August 29, 2001

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2000-31**

Text Amendment **Map Amendment**

	This document contains the following reviews:
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board Of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: June 18, 2001

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING AND THE LEE
COUNTY ATTORNEYS OFFICE

2. REQUEST:

Amend Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements to Lee County within noise zones 2 and 3. Also amend the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program. In addition, amend the Lee Plan Glossary by removing the definition of the term avigation easement as it will no longer apply in the Lee Plan.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term “avigation easement” from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property, to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The proposed amendment does not change any Airport Noise Zones, zoning categories, or Future Land Use categories.
- Inappropriate land uses near the airport are already addressed by existing land use regulations.
- The term “avigation easement” appears only in Lee Plan Policies 1.7.1, 32.2.6, and the Lee Plan Glossary.

C. BACKGROUND INFORMATION

The proposed amendment was initiated at the request of the Lee County Attorneys Office because concerns about inappropriate land uses in the Airport Noise Zones are already addressed by existing land use regulations.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Currently, Lee Plan Policy 1.7.1 requires all development in Airport Noise Zones 2 and 3 to sign a document dedicating an avigation easement on the property to Lee County. This easement grants Lee County property rights pertaining to the airspace above the owners property and waives possible claims for damages resulting from the operation of aircraft over the subject property. The easement must be granted prior to the issuance of any building permits or development orders.

Lee Plan Policy 32.2.6 implements the avigation easement program referred to in policy 1.7.1.

In a memorandum dated May 30, 2001, the Lee County Attorney's Office requested that Lee Plan Policy 1.7.1 be deleted (Attachment 1). The Attorney's Office also requested that the term "Avigation Easement" be deleted from the Lee Plan Glossary. The County Attorney's office also requested the deletion of Policy 32.2.6.

TRANSPORTATION ISSUES

Removing the avigation easement requirement neither increases nor decreases the traffic trip generation in the Airport Noise Zones. Therefore, it has no effect on traffic volumes or the transportation infrastructure.

PUBLIC SAFETY ISSUES

EMS and Fire Protection Services

The proposed amendment does not create or remove any residential units in the Airport Noise Zones. Consequently, it does not increase or decrease the demand on EMS or Fire Protection Services.

Hurricane Evacuation

As the removal of the avigation easement requirement would not add or subtract any residents to the Airport Noise Zones, the proposed amendment has no effect on hurricane evacuation times. It also has no effect on the number of evacuating people and vehicles or the amount of needed hurricane shelter space.

UTILITIES

The proposed amendment does not create any additional demand for either potable water or sanitary sewer service. Consequently, it has no effect on utility providers.

ENVIRONMENTAL ISSUES

The proposed amendment creates no environmental concerns.

DEVELOPMENT ISSUES

The proposed amendment does not increase or limit the permitted number of residential units or commercial space within the Airport Noise Zones. Therefore, it has no effect on either development intensity or residential density in the Airport Noise Zones.

POPULATION ACCOMMODATION

The proposed amendment does not change the population accommodation of the Airport Noise Zones.

HISTORIC PRESERVATION ISSUES

The proposed amendment creates no historic preservation concerns.

B. CONCLUSIONS

The proposed amendment has no effect on existing or future land uses.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term "avigation easement" from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property, to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC LPA HEARING: June 25, 2001

A. LOCAL PLANNING AGENCY REVIEW

There was no discussion by the LPA.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

The LPA recommended the Board of County Commissioners transmit this amendment that modifies Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements, amends the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program and amends the Lee Plan Glossary by removing the definition of the term "avigation easement."

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	<u>Aye</u>
SUSAN BROOKMAN	<u>Aye</u>
BARRY ERNST	<u>Aye</u>
RONALD INGE	<u>Absent</u>
GORDON REIGELMAN	<u>Aye</u>
VIRGINIA SPLITT	<u>Absent</u>
GREG STUART	<u>Aye</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: August 29, 2001

A. BOARD REVIEW: One commissioner asked if this amendment was necessary. The commissioner said that he felt that the avigation easement purchases provided the legal protection that the county needed from noise lawsuits. The County Attorneys stated that the proposal was recommended by the litigation department due to litigation that could have large impacts on the county. The attorney's office also said that the Airport Noise Zones will limit the types of development that would be negatively affected by airport noise. The attorney's office also stated that sellers of property in the Noise Zones should be required to inform potential buyers of the pertinent regulations.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. **BOARD ACTION:** The Board of County Commissioners voted to transmit the proposed plan amendment.

2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact advanced by staff and the LPA.

C. VOTE:

JOHN ALBION	<u>AYE</u>
ANDREW COY	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

RAY JUDAH

BOB JANES

DOUG ST. CERNY

LEE COUNTY
RECEIVED

01 MAY 31 AM 10:10

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 30 2001

To: Paul O'Connor
Director, Planning Division

FROM:


Donna Marie Collins
Assistant County Attorney

RE: **Bluesheet requested to include Amendment to Glossary and Lee Plan Policy 1.7.1. into Current Round of Plan Amendments**

Pursuant to the attached memorandum from John Renner of the Litigation Division of the County Attorney's Office, we wish to amend the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an avigation easement in areas adjacent to the airport. We should also amend the Glossary to delete the definition of avigation easement.

John Renner has rendered an opinion that there could potentially be a rational nexus problem in some instances since there is no provision for a variance from the requirement of the dedication prior to the issuance of a building permit. In addition, he has opined that since the concerns regarding inappropriate uses of land near the airport are already addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary. Tim has requested that I follow up on John Renner's request that the Land Development Code and Lee Plan be revised to delete the dedication requirements. Accordingly, we request that the Planning Division prepare a bluesheet requesting the Board to include such an amendment to the Plan as part of the current round of Lee Plan Amendments.

By copy of this memorandum, I request that John Fredyma and Bob Gumham note that Land Development Code Sections 34-1006(b)(2)a. and (b)(3) specifically require the dedication of an avigation easement as a condition of subdivision approval or the issuance of a building permit. Land Development Code Section 34-1003 (Definitions) includes the definition of avigation easement. These sections should be revised consistent with this memorandum. Kindly ensure that amendments to these sections are included in the Fall package of Land Development Code amendments.

If I may be of any assistance with regard to the above, do not hesitate to contact me.

DMC/amp

Attachment: John Renner's memorandum dated May 8, 2001

Paul O'Connor
May 30, 2001
Page 2

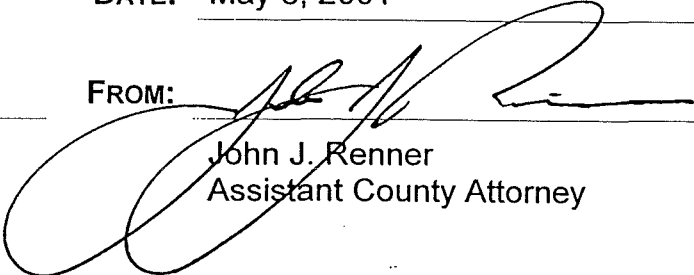
Re: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

cc: Timothy Jones, Assistant County Attorney
John Renner, Assistant County Attorney
John Fredyma, Assistant County Attorney
Mary Gibbs, Director, Department of Community Development
Robert Gurnham, Principal Planner, Development Services Division
Matt Noble, Planner, Planning Division

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: May 8, 2001

To: TIM JONES
Assistant County Attorney

FROM: 
John J. Renner
Assistant County Attorney

RE: **Lee County Development Code Sections 34-1006(b)(2)(a), (b)(3)(a)**

Sections 34-1006(b)(2)(a) and (b)(3)(a) require the dedication of avigation easements as a condition to subdivision approval or the issuance of a building permit. There is no provision for a variance from this requirement should an applicant wish to question the rational nexus between the dedication and the permit or approval. Moreover, since the concern over inappropriate uses of land close to the airport can, and are, addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary.

I would request the Board amend the Land Development Code to delete the mandatory dedication requirements.

JJR:bg

**CPA 2000-31
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**BoCC Public Hearing Document
for the
August 29, 2001 Public Hearing**

**Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585**

August 1, 2001

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2000-31**

Text Amendment **Map Amendment**

	This document contains the following reviews:
<input checked="" type="checkbox"/>	Staff Review
	Local Planning Agency Review and Recommendation
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board Of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: June 18, 2001

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING AND THE LEE
COUNTY ATTORNEYS OFFICE

2. REQUEST:

Amend Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and aviation easements to Lee County within noise zones 2 and 3. Also amend the Lee Plan by deleting Policy 32.2.6. pertaining to the Aviation Easements Program. In addition, amend the Lee Plan Glossary by removing the definition of the term aviation easement as it will no longer apply in the Lee Plan.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and aviation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the aviation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term “aviation easement” from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The proposed amendment does not change any Airport Noise Zones, zoning categories, or Future Land Use categories.
- Inappropriate land uses near the airport are already addressed by existing land use regulations.
- The term “aviation easement” appears only in Lee Plan Policies 1.7.1, 32.2.6, and the Lee Plan Glossary.

C. BACKGROUND INFORMATION

The proposed amendment was initiated at the request of the Lee County Attorneys Office because concerns about inappropriate land uses in the Airport Noise Zones are already addressed by existing land use regulations.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Currently, Lee Plan Policy 1.7.1 requires all development in Airport Noise Zones 2 and 3 to sign a document dedicating an avigation easement on the property to Lee County. This easement grants Lee County property rights pertaining to the airspace above the owners property and waives possible claims for damages resulting from the operation of aircraft over the subject property. The easement must be granted prior to the issuance of any building permits or development orders.

Lee Plan Policy 32.2.6 implements the avigation easement program referred to in policy 1.7.1.

In a memorandum dated May 30, 2001, the Lee County Attorney's Office requested that Lee Plan Policy 1.7.1 be deleted (Attachment 1). The Attorney's Office also requested that the term "Avigation Easement" be deleted from the Lee Plan Glossary. The County Attorney's office also requested the deletion of Policy 32.2.6.

TRANSPORTATION ISSUES

Removing the avigation easement requirement neither increases nor decreases the traffic trip generation in the Airport Noise Zones. Therefore, it has no effect on traffic volumes or the transportation infrastructure.

PUBLIC SAFETY ISSUES

EMS and Fire Protection Services

The proposed amendment does not create or remove any residential units in the Airport Noise Zones. Consequently, it does not increase or decrease the demand on EMS or Fire Protection Services.

Hurricane Evacuation

As the removal of the avigation easement requirement would not add or subtract any residents to the Airport Noise Zones, the proposed amendment has no effect on hurricane evacuation times. It also has no effect on the number of evacuating people and vehicles or the amount of needed hurricane shelter space.

UTILITIES

The proposed amendment does not create any additional demand for either potable water or sanitary sewer service. Consequently, it has no effect on utility providers.

ENVIRONMENTAL ISSUES

The proposed amendment creates no environmental concerns.

DEVELOPMENT ISSUES

The proposed amendment does not increase or limit the permitted number of residential units or commercial space within the Airport Noise Zones. Therefore, it has no effect on either development intensity or residential density in the Airport Noise Zones.

POPULATION ACCOMMODATION

The proposed amendment does not change the population accommodation of the Airport Noise Zones.

HISTORIC PRESERVATION ISSUES

The proposed amendment creates no historic preservation concerns.

B. CONCLUSIONS

The proposed amendment has no effect on existing or future land uses.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: ~~The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. Prior to the issuance of all building permits and development orders in both zones, noise and aviation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the aviation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term "aviation easement" from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC LPA HEARING: June 25, 2001

A. LOCAL PLANNING AGENCY REVIEW

There was no discussion by the LPA.

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

The LPA recommended the Board of County Commissioners transmit this amendment that modifies Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements, amends the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program and amends the Lee Plan Glossary by removing the definition of the term "avigation easement."

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	<u>Aye</u>
SUSAN BROOKMAN	<u>Aye</u>
BARRY ERNST	<u>Aye</u>
RONALD INGE	<u>Absent</u>
GORDON REIGELMAN	<u>Aye</u>
VIRGINIA SPLITT	<u>Absent</u>
GREG STUART	<u>Aye</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: August 29, 2001

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION	_____
ANDREW COY	_____
RAY JUDAH	_____
BOB JANES	_____
DOUG ST. CERNY	_____

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS:

B. STAFF RESPONSE

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

RAY JUDAH

BOB JANES

DOUG ST. CERNY

LEE COUNTY
RECEIVED

01 MAY 31 AM 10:10

COMM. DEV/
PUB. WORKS. CNTR.
SECOND FLOOR

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 30 2001

To: Paul O'Connor
Director, Planning Division

FROM:


Donna Marie Collins
Assistant County Attorney

**RE: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments**

Pursuant to the attached memorandum from John Renner of the Litigation Division of the County Attorney's Office, we wish to amend the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an avigation easement in areas adjacent to the airport. We should also amend the Glossary to delete the definition of avigation easement.

John Renner has rendered an opinion that there could potentially be a rational nexus problem in some instances since there is no provision for a variance from the requirement of the dedication prior to the issuance of a building permit. In addition, he has opined that since the concerns regarding inappropriate uses of land near the airport are already addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary. Tim has requested that I follow up on John Renner's request that the Land Development Code and Lee Plan be revised to delete the dedication requirements. Accordingly, we request that the Planning Division prepare a bluesheet requesting the Board to include such an amendment to the Plan as part of the current round of Lee Plan Amendments.

By copy of this memorandum, I request that John Fredyma and Bob Gurnham note that Land Development Code Sections 34-1006(b)(2)a. and (b)(3) specifically require the dedication of an aviation easement as a condition of subdivision approval or the issuance of a building permit. Land Development Code Section 34-1003 (Definitions) includes the definition of aviation easement. These sections should be revised consistent with this memorandum. Kindly ensure that amendments to these sections are included in the Fall package of Land Development Code amendments.

If I may be of any assistance with regard to the above, do not hesitate to contact me.

DMC/amp

Attachment: John Renner's memorandum dated May 8, 2001

Paul O'Connor
May 30, 2001
Page 2

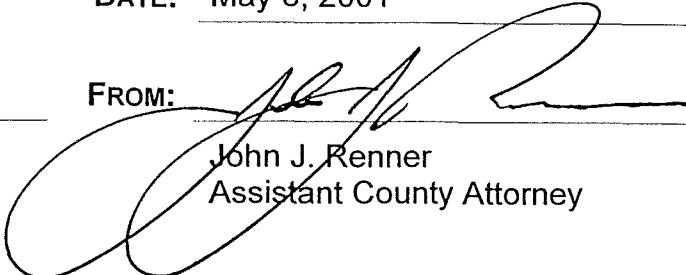
Re: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

cc: Timothy Jones, Assistant County Attorney
John Renner, Assistant County Attorney
John Fredyma, Assistant County Attorney
Mary Gibbs, Director, Department of Community Development
Robert Gurnham, Principal Planner, Development Services Division
Matt Noble, Planner, Planning Division

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 8, 2001

To: TIM JONES
Assistant County Attorney

FROM: 
John J. Renner
Assistant County Attorney

RE: **Lee County Development Code Sections 34-1006(b)(2)(a), (b)(3)(a)**

Sections 34-1006(b)(2)(a) and (b)(3)(a) require the dedication of avigation easements as a condition to subdivision approval or the issuance of a building permit. There is no provision for a variance from this requirement should an applicant wish to question the rational nexus between the dedication and the permit or approval. Moreover, since the concern over inappropriate uses of land close to the airport can, and are, addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary.

I would request the Board amend the Land Development Code to delete the mandatory dedication requirements.

JJR:bg

**CPA 2000-31
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**LPA Public Hearing Document
for the
June 25th, 2001 Public Hearing**

**Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585**

June 18, 2001

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA 2000-31**

Text Amendment **Map Amendment**

	This document contains the following reviews:
<input checked="" type="checkbox"/>	Staff Review
	Local Planning Agency Review and Recommendation
	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board Of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: June 18, 2001

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING AND THE LEE
COUNTY ATTORNEYS OFFICE

2. REQUEST:

Amend Policy 1.7.1, Airport Noise Zones, of the Future Land Use Element by removing language pertaining to the dedication of noise and avigation easements to Lee County within noise zones 2 and 3. Also amend the Lee Plan by deleting Policy 32.2.6. pertaining to the Avigation Easements Program. In addition, amend the Lee Plan Glossary by removing the definition of the term avigation easement as it will no longer apply in the Lee Plan.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term “avigation easement” from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The proposed amendment does not change any Airport Noise Zones, zoning categories, or Future Land Use categories.
- Inappropriate land uses near the airport are already addressed by existing land use regulations.
- The term “avigation easement” appears only in Lee Plan Policies 1.7.1, 32.2.6, and the Lee Plan Glossary.

C. BACKGROUND INFORMATION

The proposed amendment was initiated at the request of the Lee County Attorneys Office because concerns about inappropriate land uses in the Airport Noise Zones are already addressed by existing land use regulations.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

Currently, Lee Plan Policy 1.7.1 requires all development in Airport Noise Zones 2 and 3 to

sign a document dedicating an avigation easement on the property to Lee County. This easement grants Lee County property rights pertaining to the airspace above the owners property and waives possible claims for damages resulting from the operation of aircraft over the subject property. The easement must be granted prior to the issuance of any building permits or development orders.

Lee Plan Policy 32.2.6 implements the avigation easement program referred to in policy 1.7.1.

In a memorandum dated May 30, 2001, the Lee County Attorney's Office requested that Lee Plan Policy 1.7.1 be deleted (Attachment 1). The Attorney's Office also requested that the term "Avigation Easement" be deleted from the Lee Plan Glossary. The County Attorney's office also requested the deletion of Policy 32.2.6.

TRANSPORTATION ISSUES

Removing the avigation easement requirement neither increases nor decreases the traffic trip generation in the Airport Noise Zones. Therefore, it has no effect on traffic volumes or the transportation infrastructure.

PUBLIC SAFETY ISSUES

EMS and Fire Protection Services

The proposed amendment does not create or remove any residential units in the Airport Noise Zones. Consequently, it does not increase or decrease the demand on EMS or Fire Protection Services.

Hurricane Evacuation

As the removal of the avigation easement requirement would not add or subtract any residents to the Airport Noise Zones, the proposed amendment has no effect on hurricane evacuation times. It also has no effect on the number of evacuating people and vehicles or the amount of needed hurricane shelter space.

UTILITIES

The proposed amendment does not create any additional demand for either potable water or sanitary sewer service. Consequently, it has no effect on utility providers.

ENVIRONMENTAL ISSUES

The proposed amendment creates no environmental concerns.

DEVELOPMENT ISSUES

The proposed amendment does not increase or limit the permitted number of residential units or commercial space within the Airport Noise Zones. Therefore, it has no effect on either development intensity or residential density in the Airport Noise Zones.

POPULATION ACCOMMODATION

The proposed amendment does not change the population accommodation of the Airport Noise Zones.

HISTORIC PRESERVATION ISSUES

The proposed amendment creates no historic preservation concerns.

B. CONCLUSIONS

The proposed amendment has no effect on existing or future land uses.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed policy as amended:

Policy 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. In addition to meeting the requirements of the underlying Future Land Use Map categories, Airport noise Zone 2 does not permit mobile homes; and Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. ~~Prior to the issuance of all building permits and development orders in both zones, noise and avigation easements must be dedicated to Lee County.~~

~~**Policy 32.2.6:** The County and Port Authority will implement the avigation easements program for property located in close proximity to the Southwest Florida International Airport subject to overflights and potential noise exposure, consistent with the approved Airport Master Plan and state and federal guidelines. (Amended by Ordinance No. 99-15)~~

Staff also recommends amending the Lee Plan by deleting the definition of the term "avigation easement" from the glossary:

~~AVIGATION EASEMENT - The transference by grant of a property owner's legal property pertaining to the airspace above his property, and the waiving of any possible claims for damages resulting from the operation of aircraft above the surface of the Grantor's property; to include, but not be limited to: noise, vibrations, fumes, dust, fuel particles, and any other effects that may be caused due to present and future aircraft flights over the Grantor's property.~~

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC LPA HEARING: June 25, 2001

A. LOCAL PLANNING AGENCY REVIEW

**B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT
SUMMARY**

1. RECOMMENDATION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

NOEL ANDRESS

SUSAN BROOKMAN

BARRY ERNST

RONALD INGE

GORDON REIGELMAN

VIRGINIA SPLITT

GREG STUART

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF TRANSMITTAL HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION	_____
ANDREW COY	_____
RAY JUDAH	_____
BOB JANES	_____
DOUG ST. CERNY	_____

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: _____

- A. **DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS:**

- B. **STAFF RESPONSE**

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: _____

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

RAY JUDAH

BOB JANES

DOUG ST. CERNY

LEE COUNTY
RECEIVED

01 MAY 31 AM 10:10

CLERK
RECEIVED

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: May 30, 2001

To: Paul O'Connor
Director, Planning Division

FROM:


Donna Marie Collins
Assistant County Attorney

**RE: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments**

Pursuant to the attached memorandum from John Renner of the Litigation Division of the County Attorney's Office, we wish to amend the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an avigation easement in areas adjacent to the airport. We should also amend the Glossary to delete the definition of avigation easement.

John Renner has rendered an opinion that there could potentially be a rational nexus problem in some instances since there is no provision for a variance from the requirement of the dedication prior to the issuance of a building permit. In addition, he has opined that since the concerns regarding inappropriate uses of land near the airport are already addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary. Tim has requested that I follow up on John Renner's request that the Land Development Code and Lee Plan be revised to delete the dedication requirements. Accordingly, we request that the Planning Division prepare a bluesheet requesting the Board to include such an amendment to the Plan as part of the current round of Lee Plan Amendments.

By copy of this memorandum, I request that John Fredyma and Bob Gurnham note that Land Development Code Sections 34-1006(b)(2)a. and (b)(3) specifically require the dedication of an aviation easement as a condition of subdivision approval or the issuance of a building permit. Land Development Code Section 34-1003 (Definitions) includes the definition of aviation easement. These sections should be revised consistent with this memorandum. Kindly ensure that amendments to these sections are included in the Fall package of Land Development Code amendments.

If I may be of any assistance with regard to the above, do not hesitate to contact me.

DMC/amp

Attachment: John Renner's memorandum dated May 8, 2001

Paul O'Connor
May 30, 2001
Page 2

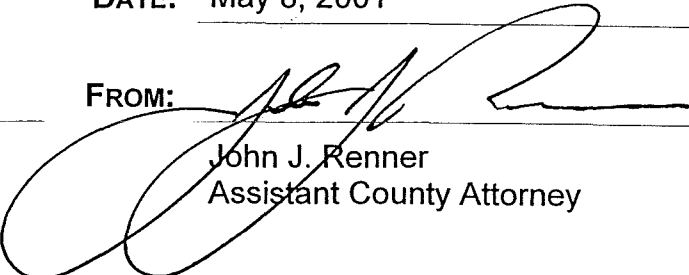
Re: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

cc: Timothy Jones, Assistant County Attorney
John Renner, Assistant County Attorney
John Fredyma, Assistant County Attorney
Mary Gibbs, Director, Department of Community Development
Robert Gurnham, Principal Planner, Development Services Division
Matt Noble, Planner, Planning Division

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: May 8, 2001

To: TIM JONES
Assistant County Attorney

FROM: 
John J. Renner
Assistant County Attorney

RE: **Lee County Development Code Sections 34-1006(b)(2)(a), (b)(3)(a)**

Sections 34-1006(b)(2)(a) and (b)(3)(a) require the dedication of avigation easements as a condition to subdivision approval or the issuance of a building permit. There is no provision for a variance from this requirement should an applicant wish to question the rational nexus between the dedication and the permit or approval. Moreover, since the concern over inappropriate uses of land close to the airport can, and are, addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary.

I would request the Board amend the Land Development Code to delete the mandatory dedication requirements.

JJR:bg

PLANNING DIVISION
M E M O R A N D U M



to: The Lee Plan
from: Paul O'Connor, AICP, Director of Planning
subject: CPA2000-00031
date: September 10, 2002

This memo is in reference to corrections made to Lee Plan Amendment CPA 2000-00031. The language used in the original staff report was based upon the Lee Plan Codification from June 2000 as this was the codification available online. However, Lee Plan Amendment PAM/T 99-03 amended the language of Policy 1.7.1 and was included in the Lee Plan December 2000 codification. This was the language in effect at the time of adoption of CPA2000-00031. In order to correct for this error, the phrase, "Prior to the issuance of all building permits and development orders in zones 2 and 3, noise and aviation easements must be dedicated to Lee County." should be deleted from Lee Plan Policy 1.7.1. This will bring the current codification into conformance with Lee Plan Amendment CPA 2000-00031. Below is the entire text of Lee Plan Policy 1.7.1 with the deleted phrase in ~~strikeout~~ format.

POLICY 1.7.1: The Airport Noise Zones cover areas subject to varying levels of airport-related noise. By 2006 and every 5 years thereafter, the Port Authority will update the aviation forecasts and associated noise contours for the Southwest Florida International Airport and initiate an amendment to the Airport Noise Zone Overlay Map to reflect the findings of this study. ~~Prior to the issuance of all building permits and development orders in zones 2 and 3, noise and aviation easements must be dedicated to Lee County.~~ In addition to meeting the requirements of the underlying Future Land Use Map categories, properties within the Noise Zone Overlay must meet the following:

Airport Noise Zone 1 has no noise related restrictions.

Airport Noise Zone 2 does not permit mobile or manufactured homes. However, mobile or manufactured homes that were lawfully existing as of June 27, 2000 will be treated as legally permitted uses and may be replaced with a new mobile or manufactured home or conventional single family construction so long as such replacement would be otherwise allowed by this code.

Airport Noise Zone 3 does not permit any residential units, churches, libraries, schools, hospitals, correctional institutions, or nursing homes. However, residential units, including mobile or manufactured homes, that were lawfully existing as of June 27,

2000 will be treated as legally permitted uses and may be replaced with a new mobile or manufactured home or conventional single family construction so long as such replacement would be otherwise allowed by this code. However, an existing conventional home may not be replaced with a new mobile or manufactured home. One conventional single family home is permitted on each lot in a plat properly recorded before June 27, 2000 if such use would have been permitted on the lot prior to June 27, 2000.

Airport Noise Zone 4 is limited to uses that are compatible with airports and air commerce, including but not limited to those necessary to provide services and convenience goods to airline passengers, those generally associated with airport operation, and related development.

(Amended by Ordinance No. 00-22)

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20010670

1. REQUESTED MOTION:

ACTION REQUESTED: (1) Initiate an amendment to the current Lee Plan amendment cycle to amend Lee Plan Policy 1.7.1 to delete the requirement that property owners dedicate an avigation easement in certain areas adjacent to the Southwest Florida International Airport and delete the definition of Avigation Easement that is contained in the Glossary. (2) Suspend, for this instance only, the provisions of Administrative Code 13-6 Section D.1. which requires amendments submitted after October 1 to be processed in the following year's amendment cycle to allow the amendment proposed in the second part of this Action Request to run in the current amendment cycle.

WHY ACTION IS NECESSARY: The County Attorney's Office has requested that the Board of County Commissioners take this action to reduce the possibility of litigation over this issue.

WHAT THE ACTION ACCOMPLISHES: Starts the amendment process so that the County does not have to wait until the next amendment cycle, eliminating the County's exposure to litigation over these provisions.

2. DEPARTMENTAL CATEGORY: 04 Community Development

COMMISSION DISTRICT # 5

3. MEETING DATE:

June 26, 2001

A4B

4. AGENDA

CONSENT
 ADMINISTRATION
APPEALS
PUBLIC
TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)
STATUTE
ORDINANCE
ADMIN. CODE
 OTHER LEE PLAN

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER _____
B. DEPARTMENT Community Development
C. DIVISION Planning POC 6/8/01
BY Paul O'Connor, Planning Div. Dir.

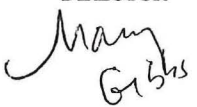
7. BACKGROUND:

The County Attorney's Office requested this action. Please see attached memorandums.

Attachments: Memorandum from Donna Marie Collins, May 30, 2001
Memorandum from John Renner, May 8, 2001

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

DEPARTMENT DIRECTOR	PURCHASING	HUMAN RELATIONS	COUNTY ADMINISTRATION				OTHER	COUNTY ATTORNEY	COUNTY MANAGER
 Mary Gibbs	N/A	N/A	<u>OA</u>	<u>OM</u>	<u>Risk</u>	<u>GC</u>			

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

ADMINISTRATIVE AGENDA

June 26, 2001

1. COUNTY MANAGER

(a) **ACTION REQUESTED:**

Consider settlement offer of \$175,000.00 in the case of James Sorenson v. Lee County EMS, case number 97-1131-CA-WCM.

WHY ACTION IS NECESSARY:

To duly consider a settlement offer that was negotiated in good faith during the course of court ordered mediation.

WHAT THE ACTION ACCOMPLISHES:

Resolves the case prior to trial limiting the County's exposure to additional attorney's fees and possible adverse verdict. (#20010665-Risk Management)

(b) **ACTION REQUESTED:**

Consider approval for the Board of County Commissioners to adopt resolutions establishing the Communications Tax Simplification Act on telecommunications services.

WHY ACTION IS NECESSARY:

Based upon Florida Senate Bill 1878, the Department of Revenue (DOR) requires an affirmative vote by the Board of County Commissioners to establish a conversion rate

WHAT THE ACTION ACCOMPLISHES:

Allows the local government to retain all revenues from the Communications Service Tax. (#20010676-County Manager)

2. PLANNING AND CONSTRUCTION

3. COUNTY COMMISSIONERS

4. COMMUNITY DEVELOPMENT

(a) **ACTION REQUESTED:**

Approve the extension of the vacated Master Concept Plan for Daniels Parkway Business Center for a period not to exceed two (2) years from the date of extension.

WHY ACTION IS NECESSARY:

To allow for the extension of the duration of rights for the approved Daniels Parkway Business Center Planned Development.

WHAT THE ACTION ACCOMPLISHES:

To allow the original zoning approval of the Commercial Planned Development to be extended for a maximum period of two (2) years pursuant to Land Development Code 34-381. (#20010416-Development Services)

4. COMMUNITY DEVELOPMENT (Cont.)

(b) **ACTION REQUESTED:**

(1) Initiate an amendment to the current Lee Plan amendment cycle to amend Lee Plan Policy 1.7.1 to delete the requirement that property owners dedicate an avigation easement in certain areas adjacent to the Southwest Florida International Airport and delete the definition of Avigation Easement that is contained in the Glossary. (2) Suspend, for this instance only, the provisions of Administrative Code 13-6 Section D.1., which requires amendments submitted after October 1 to be processed in the following year's amendment cycle to allow the amendment proposed in the second part of this Action Request to run in the current amendment cycle.

WHY ACTION IS NECESSARY:

The County Attorney's Office has requested that the Board of County Commissioners take this action to reduce the possibility of litigation over this issue.

WHAT THE ACTION ACCOMPLISHES:

Starts the amendment process so that the County does not have to wait until the next amendment cycle, eliminating the County's exposure to litigation over these provisions. (#20010670-Planning)

5. HUMAN SERVICES

6. INDEPENDENT DIVISIONS

7. PUBLIC SERVICE DIVISIONS

8. SOLID WASTE-NATURAL RESOURCES

9. TRANSPORTATION

(a) **ACTION REQUESTED:**

Authorize and direct the Department of Transportation to: (1) forward the Sanibel Causeway Improvement Study's Preliminary Engineering Report to the US Coast Guard for their approval and/or comment, (2) direct staff to prepare a letter of appreciation to the Sanibel Study Group for the chairman's signature to sunset the group in accordance with the resolution (attached) and (3) direct County staff to work with the Sanibel staff to prepare an interlocal agreement between Lee County and the City of Sanibel that would insure that the new bridges will never be four-laned.

WHY ACTION IS NECESSARY:

This action is required by the National Environmental Policy Act.

WHAT THE ACTION ACCOMPLISHES:

This action will begin the process of comments and responses to reach concurrence of the PD&E by the US Coast Guard and all commenting agencies. (#20010690-Transportation)

10. UTILITIES

11. COUNTY ATTORNEY

(a) **ACTION REQUESTED:**

Adopt resolution to amend the Lee County Administrative Code to include a new Code to Provide procedures for the Community Planning effort and to establish minimum acceptable Criteria for the community planning process.

WHY ACTION IS NECESSARY:

Lee County Ordinance No. 97-23 requires that amendments to the Lee County Administrative Code be made by Resolution of the Board of County Commissioners.

WHAT THE ACTION ACCOMPLISHES:

Establishes a new Administrative Code designed to outline the administrative procedures governing community-planning efforts receiving financial support from the Board of County Commissioners. (#20010655-County Attorney)

12. HEARING EXAMINER

13. PORT AUTHORITY

14. CONSTITUTIONAL OFFICERS

15. COMMUNITY REDEVELOPMENT AGENCY

16. VISITOR AND CONVENTION BUREAU

17. PUBLIC WORKS DIVISION



LEE COUNTY

SOUTHWEST FLORIDA

DIVISION OF PLANNING

FACSIMILE

P.O. Box 398
 Fort Myers, FL 33902
 (941) 479-8585
 Fax: (941) 479 8319

To: <i>Greg Hagen</i>	Date: <i>6/13/01</i>
Fax #: <i>768-4497</i>	Pages: <i>11</i> , including this cover sheet.
From: <i>Peter Blackwell, Division of Planning 479-8312</i>	
Subject: <i>Aviation easement amendment</i>	

COMMENTS:

*This copy of the amendment is only a draft. The number is
 actually 2000-31, not 2001-04.*

- Peter B.

LEE COUNTY
RECEIVED


01 MAY 31 AM 10:10

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: May 30, 2001

To: Paul O'Connor
Director, Planning Division

FROM: 
Donna Marie Collins
Assistant County Attorney

**RE: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments**

Pursuant to the attached memorandum from John Renner of the Litigation Division of the County Attorney's Office, we wish to amend the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an avigation easement in areas adjacent to the airport. We should also amend the Glossary to delete the definition of avigation easement.

John Renner has rendered an opinion that there could potentially be a rational nexus problem in some instances since there is no provision for a variance from the requirement of the dedication prior to the issuance of a building permit. In addition, he has opined that since the concerns regarding inappropriate uses of land near the airport are already addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary. Tim has requested that I follow up on John Renner's request that the Land Development Code and Lee Plan be revised to delete the dedication requirements. Accordingly, we request that the Planning Division prepare a bluesheet requesting(the Board to include such an amendment to the Plan as part of the current round of Lee Plan Amendments.

By copy of this memorandum, I request that John Fredyma and Bob Gurnham note that Land Development Code Sections 34-1006(b)(2)a. and (b)(3) specifically require the dedication of an aviation easement as a condition of subdivision approval or the issuance of a building permit. Land Development Code Section 34-1003 (Definitions) includes the definition of aviation easement. These sections should be revised consistent with this memorandum. Kindly ensure that amendments to these sections are included in the Fall package of Land Development Code amendments.

If I may be of any assistance with regard to the above, do not hesitate to contact me.

DMC/amp

Attachment: John Renner's memorandum dated May 8, 2001

Paul O'Connor
May 30, 2001
Page 2

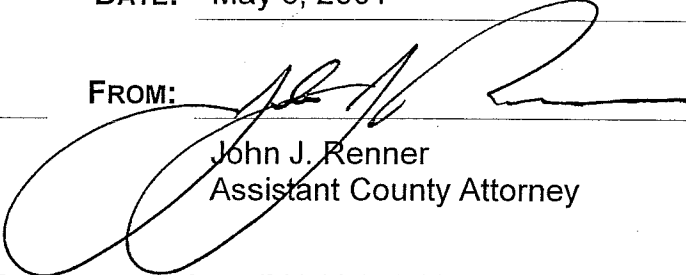
Re: Bluesheet requested to include Amendment to Glossary and
Lee Plan Policy 1.7.1. into Current Round of Plan Amendments

cc: Timothy Jones, Assistant County Attorney
John Renner, Assistant County Attorney
John Fredyma, Assistant County Attorney
Mary Gibbs, Director, Department of Community Development
Robert Gurnham, Principal Planner, Development Services Division
Matt Noble, Planner, Planning Division

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 8, 2001

To: TIM JONES
Assistant County Attorney

FROM: 
John J. Renner
Assistant County Attorney

RE: Lee County Development Code Sections 34-1006(b)(2)(a), (b)(3)(a)

Sections 34-1006(b)(2)(a) and (b)(3)(a) require the dedication of avigation easements as a condition to subdivision approval or the issuance of a building permit. There is no provision for a variance from this requirement should an applicant wish to question the rational nexus between the dedication and the permit or approval. Moreover, since the concern over inappropriate uses of land close to the airport can, and are, addressed by existing land use regulations, the mandatory dedication requirement appears unnecessary.

I would request the Board amend the Land Development Code to delete the mandatory dedication requirements.

JJR:bg

To: M. Nable

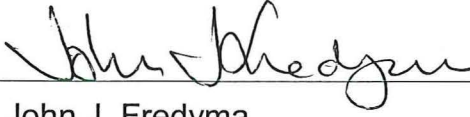
MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

LEE COUNTY
RECEIVED
01 DEC 18 AM 9:14

COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR

DATE: December 17, 2001

To: William Horner
Principal Planner
Lee County Port Authority

FROM: 
John J. Fredyma
Assistant County Attorney

RE: Removal of Lee County Land Development Code (LDC)
requirement for Avigation Easements

As a follow-up to my memo dated December 3, 2001, I felt it necessary to clarify the purpose of that memo. In particular, I was concerned that statements I made in a meeting on November 15, 2001 were incorrect insofar as they may have misled you to believe that the most recent round of LDC amendments left intact a requirement for a property owner to include an avigation easement on the face of a plat of property located within Noise Zones 2 or 3. In fact, this requirement has been deleted from the Land Development Code in the last round of amendments. Lee County Ordinance No. 01-18 made changes to LDC §§ 34-1006(b)(2)(a) and (b)(3)(a). This ordinance became effective on November 21, 2001 when it was filed in the Office of the Secretary of the Florida Department of State.

My earlier memo also referenced discussions you and I had with your staff and a consultant back in July. These discussions were focused on possible changes to the Planned Development Matrix for Airport Operations Planned Development District (AOPD), and this work continues today. I apologize for any confusion that may have occurred as a result of my earlier memo. Please do not hesitate to call if you have any questions.

JJF/mme

cc: John Renner, Chief Assistant County Attorney (Litigation)
Greg Hagen, Assistant Port Authority Attorney
Timothy Jones, Chief Assistant County Attorney (Land Use)
Mary Gibbs, Director, Department of Community Development
Paul O'Connor, Director, Planning Department
Robert Gurnham, Principal Planner, Development Services Division
Jami McCormick, Senior Manager, Planning & Environmental Compliance, Port Authority

1. REQUESTED MOTION:

ACTION REQUESTED: (1) Initiate an amendment to the current Lee Plan amendment cycle to amend Lee Plan Policy 1.7.1 to delete the requirement that property owners dedicate an avigation easement in certain areas adjacent to the Southwest Florida International Airport, delete Lee Plan Policy 32.2.6, and delete the definition of Avigation Easement that is contained in the Glossary. (2) Suspend, for this instance only, the provisions of Administrative Code 13-6 Section D.1. which requires amendments submitted after October 1 to be processed in the following year's amendment cycle to allow the amendment proposed in the second part of this Action Request to run in the current amendment cycle.

WHY ACTION IS NECESSARY: The County Attorney's Office has requested that the Board of County Commissioners take this action to reduce the possibility of litigation over the avigation easements.

WHAT THE ACTION ACCOMPLISHES: Starts the amendment process so that the County does not have to wait until the next amendment cycle.

2. DEPARTMENTAL CATEGORY: 04 Community Development
COMMISSION DISTRICT # 5

4B

3. MEETING DATE:

06-26-2001

4. AGENDA

CONSENT
 ADMINISTRATION
APPEALS
PUBLIC
TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)
STATUTE
ORDINANCE
ADMIN. CODE
 OTHER LEE PLAN

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER _____
B. DEPARTMENT Community Development
C. DIVISION Planning
BY Paul O'Connor, Planning Div. Dir.

7. BACKGROUND:

Based upon the recommendation of the Litigation Division of the County Attorney's Office, the Planning Division recommends the following amendments to the Lee Plan incorporated into the current round of plan amendments. These include an amendment to the Lee Plan Policy 1.7.1. to delete the requirement that property owners dedicate an Avigation Easement within areas adjacent to the Airport, an amendment to the Glossary to delete the definition of Avigation Easement, and finally the deletion of Policy 32.2.6., which requires the County and the Port Authority to implement an Avigation Easement Program for properties located in close proximity to the Airport.

The Litigation Division has rendered an opinion that there could potentially be a rational nexus issue in some instances since there is no provision for variance from the requirement of the avigation easement dedication prior to the issuance of a building permit. Furthermore, they have opined that since the concerns regarding inappropriate uses of land near the Airport are already addressed by existing land use regulations, the mandatory dedication requirement is unnecessary. This blue sheet requests the Board to include amendments to the Plan, deleting references to Avigation Easements as part of the current round of pending amendments to the Lee Plan.

References to Avigation Easements in the Land Development Code will be addressed in the next round of LDC amendments.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

DEPARTMENT DIRECTOR	PURCHASING	HUMAN RELATIONS	COUNTY ADMINISTRATION				OTHER	COUNTY ATTORNEY	COUNTY MANAGER
			OA	OM	Risk	GC			
	N/A	N/A	6/18/01	6/18/01	6/18	6/18			

10. COMMISSION ACTION:

APPROVED AS AMENDED
 DENIED
 DEFERRED (PER RECAP SHEET)
 OTHER

RECEIVED BY
COUNTY ADMIN.
6/18/01
3:30
6/18/01
4:30 pm