



Lee County
Southwest Florida

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Dave Harner, II
County Manager

Richard Wm. Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

September 7, 2023

Barbara Powell, Plan Processing Administrator
State Land Planning Agency
Caldwell Building
107 East Madison – MSC 160
Tallahassee, FL 32399-4120

**Re: Amendment to the Lee Plan
Transmittal Submission Package
CPA2023-00004, Building Height and Resiliency**

Dear Ms. Powell,

In accordance with the provisions of F.S. Chapter 163.3184(3) for Expedited State Review, please find attached the proposed Comprehensive Plan Amendment, known locally as CPA2023-00004 (Building Height and Resiliency). The amendment is as follows:

CPA2023-00004, Building Height and Resiliency

Amend Lee Plan Goal 23 and Policy 23.2.3 to remove requirements that restrict the ability to redevelop or rebuild structures in a way that reduces potential flooding threats by accommodating required minimum flood elevations.

The Local Planning Agency held a public meeting for the plan amendment on May 22, 2023. The Board of County Commissioners voted to transmit the amendment on September 6, 2023. The proposed amendment is not applicable to an area of critical state concern. The Board of County Commissioners stated their intent to hold an adoption hearing following the receipt of the review agencies' comments.

The name, title, address, telephone number, and email address of the person for the local government who is most familiar with the proposed amendment is as follows:

Mr. Brandon Dunn, Manager
Lee County Planning Section
P.O. Box 398
Fort Myers, Florida 33902-0398
(239) 533-8585
Email: bdunn@leegov.com

By copy of this letter and its attachments, I certify that this amendment and supporting data and analysis have been sent on this date to the agencies listed below.

Sincerely,

**Lee County Department of Community Development
Planning Section**



Brandon Dunn,
Manager, Community Development Operations

Cc Case File

Comprehensive Plan Review
Department of Agriculture and Consumer Services

Morgan Runion, AICP
Department of Education

Plan Review
Department of Environmental Protection

Alissa S. Lotane
Florida Department of State

Scott Sanders
Florida Fish and Wildlife Conservation Commission

Vitor Suguri
FDOT District One

Ms. Margaret Wuerstle
Southwest Florida Regional Planning Council

Terry Manning, AICP
South Florida Water Management District

Attn:
LCBC-DEPT OF COMM DEVELOPMENT-
1500 MONROE ST
FORT MYERS, FL 33901

NOTICE OF PROPOSED AMENDMENT TO THE
LEE COUNTY COMPREHENSIVE LAND USE PLAN
(TRANSMITTAL HEARING)

State of Wisconsin, County of Brown:
Before the undersigned authority personally appeared
K. Hillen, who on oath says that
he or she is a Legal Assistant of the News-Press, a daily
newspaper published at Fort Myers in Lee County, Florida; that
the attached copy of advertisement, being a Legal Ad in the
matter of

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, September 6, 2023. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers, 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity:

CPA2023-00004 Building Height and Resiliency Amend Lee Plan Goal 23 and Policy 23.2.3 to remove requirements that restrict the ability to redevelop or rebuild structures in order to reduce potential flooding threats by accommodating required minimum flood elevations.

This transmittal hearing is the first step in a two step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application.

Documentation for the Proposed Comprehensive Plan Amendment is available at <https://www.leegov.com/dcd/planning/cpa> or at the Department of Community Development located at 1500 Monroe Street, Fort Myers, Florida. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

It is the intent of the Board of County Commissioners that the provisions of this Comprehensive Plan Amendment may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

Lee County will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income or family status. To request language interpretation, document translation or an ADA-qualified reasonable modification at no charge to the requestor, contact Joan LaGuardia, (239) 839-6038, Florida Relay Service 711, at least five business days in advance. El Condado de Lee brindará servicios de traducción sin cargo a personas con el idioma limitado del inglés.
AD #5800769 8/25/23

NOTICE OF PROPOSED AMENDMENT TO THE LEE COUNTY COMPREHENSIVE LAND USE PLAN (TRANSMITTAL HEARING)
The Lee County Board of County Commissioners will hold a public

In the Twentieth Judicial Circuit Court was published in said newspaper editions dated in the issues of or by publication on the newspaper's website, if authorized, on :

08/25/2023

Affiant further says that the said News-Press is a paper of general circulation daily in Lee County and published at Fort Myers, in said Lee County, Florida, and that the said newspaper has heretofore been continuously published in said Lee County, Florida each day and has been entered as periodicals matter at the post office in Fort Myers, in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper editions dated:

Sworn to and Subscribed before me this 25th of August 2023, by legal clerk who is personally known to me.



Affiant

Notary State of Wisconsin, County of Brown

My commission expires

of Affidavits 1

This is not an invoice

NICOLE JACOBS
Notary Public
State of Wisconsin

STAFF REPORT FOR CPA2023-00004: BUILDING HEIGHT AND RESILIENCY



County Initiated Text Amendments to the Lee Plan

Amendment Type:

County Initiated
Direction: 01/17/2023

Recommendation:

Transmit

Amended Element(s):

Future Land Use

Hearing Dates:

LPA: 05/22/23
BoCC #1: 09/06/23
BoCC #2:

Attachment(s):

1: Text Amendments

REQUEST

Amend Lee Plan Goal 23 and Policy 23.2.3 to remove requirements that restrict the ability to redevelop or rebuild structures in a way that reduces potential flooding threats by accommodating required minimum flood elevations.

SUMMARY

Staff reviewed the Lee Plan and identified two provisions, Goal 23 and Policy 23.2.3, which do not accommodate increased height due to increases of minimum flood elevations over time. The intent of the amendments is to accommodate increased resiliency to flooding, while minimizing changes to height that would be inconsistent with the character of the surrounding community.

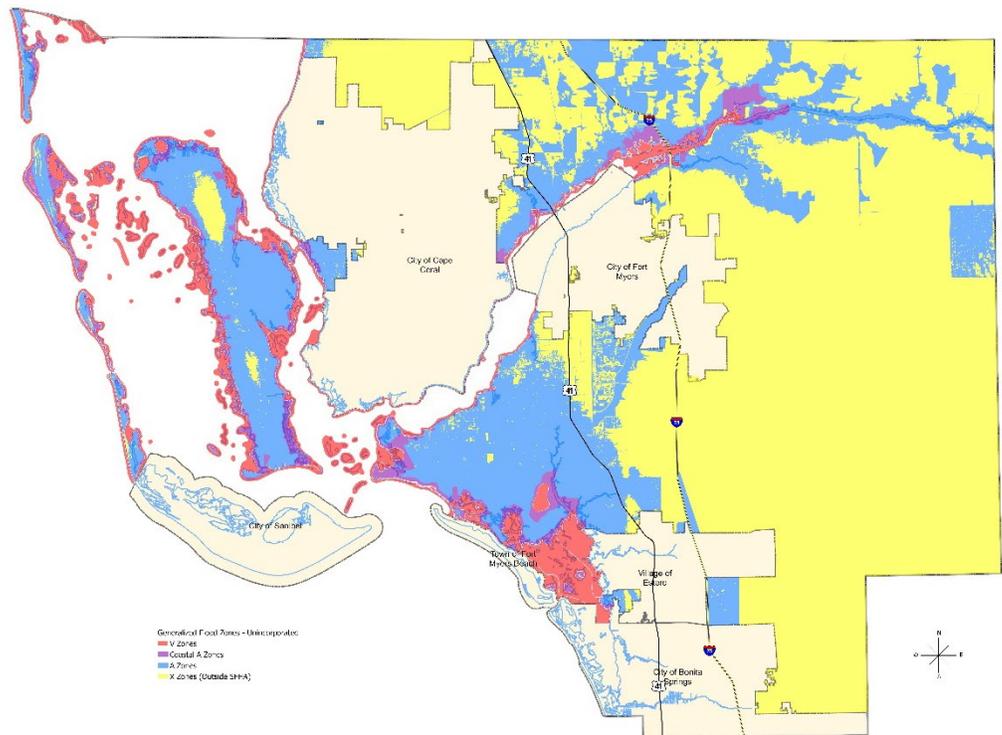


Figure 1: Generalized Flood Zones - Unincorporated Lee County

RECOMMENDATION

Staff recommends that the Board of County Commissioners **transmit** the requested amendments based on the analysis and findings provided in this staff report.

PART 1
STAFF DISCUSSION AND ANALYSIS

BACKGROUND

In the wake of Hurricane Ian, residents and business of Lee County have encountered conflicting federal, state, and county regulations during the process of rebuilding or redeveloping lawfully existing structures. In Lee County one of the most frequently identified concerns is meeting current minimum flood elevation requirements while also meeting local height requirements.

Adding to this concern, on November 17, 2022, the Federal Emergency Management Agency released updated flood maps which generally increased required base flood elevations from the previously effective flood maps.

On January 17, 2023, the Board of County Commissioners directed staff to identify regulatory constraints when seeking redevelopment to accommodate increased resiliency to flood events. Based on this direction staff analyzed the entire Lee Plan to identify restrictions that may create problems with rebuilding in accordance with state and federal building regulations. Staff identified one goal and one policy within the Lee Plan that limit maximum height without allowing for increases to state and federal minimum flood elevations. Both of these provisions relate to height within the Captiva Community Plan Area.

COMMUNITY PLANNING

The Captiva Community Plan was adopted into the Lee Plan by Ordinance 03-01, the adopting ordinance of CPA2001-00010: Pertaining to the Captiva Island Community Plan, on January 9, 2003. The staff report of CPA2001-00010 states that “The Community expressed a desire to implement a stronger community approach to land use and zoning issues to proactively address community character, density, natural resources, public participation and transportation.”

Goal 23 intends to “protect the coastal barrier island community’s natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history.” The goal of the Captiva Community Plan is accomplished through various environmental protections and limits on development. The full Goal 23, including proposed amendments, is identified below:

GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community’s natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights and~~ the historic low-density residential development pattern of Captiva.

The generality with which the current Goal 23 is written, concerning building heights, is vague but still limiting. The wording is ambiguous because it does not define a starting point for the “one and two story building heights,” nor does it clarify if areas within a structure but below the base flood elevation, which may include storage or parking, would be considered one of the allowable two stories. Without a clear

definition of “one and two story building heights”, land owners seeking to make their properties more resilient are left with limited ability to rebuild their properties while retaining the same amount of useable living space within the structure. Community character will continue to be enforced through specific height limitations within the Land Development Code.

Policy 23.2.3 as currently written, ties land owners to past regulations on building height and restricts property owners’ ability to adapt to dynamic regulations and coastal environments. While this policy does aid in protecting the character of the island, it also prevents residents and business owners who had structures damaged by Hurricane Ian from rebuilding within federal and state flood regulations while maintaining previously approved usable living space. The full Policy 23.2.3, including proposed amendments, is as follows:

POLICY 23.2.3: Building Heights. Maintain building height regulations established as of March 23, 2018 that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures

The original Captiva Plan provided guidance for heights allowed in the Community Plan Area with the purpose of limiting density on the island that provided a maximum height of 35 feet above grade or 42 feet above sea level, whichever was lower. This guidance was later updated by Ordinance 11-19 (CPA2010-00015), which added an option to have a maximum height of “28 feet above the lowest horizontal member at or below the lawful base flood elevation.” These specific heights were later removed from the Lee Plan and relocated to the Land Development Code, where they are more appropriate, through Ordinance 18-4 (CPA2015-00009). At that time the specific language was replaced by the language currently in Policy 23.2.3 which commits to maintaining LDC regulations that appropriately regulate height. Subsequently, the Captiva Plan Goal was renumbered from Goal 13 to its current Goal 23 in 2018 by Ordinance 18-18 (CPA2017-00010).

The proposed amendment to Policy 23.2.3 is to delete a specific date that does not allow for updates to state or federal requirements. Captiva’s community character and low density will continue to be maintained by **Policy 23.2.4** and **Policy 23.2.5**. Policy 23.2.4 states that development on Captiva is limited to the historic development pattern, which is “comprised of low-density residential dwelling units.” Policy 23.2.5 prohibits certain rezonings that reduce the minimum lot size per unit, aiding in the protection of the low-density character of the island. Staff finds the potential change in character resulting from the proposed amendments is minimal and is consistent with the intent of the Policy.

Policy 17.3.2 requires all privately-initiated amendments within a community plan area to conduct one or more public meetings within the boundary of the community plan area in question. Since the proposed text amendments are county-initiated, there is no requirement to hold a meeting within the boundaries of the Captiva community plan area per Policy 17.3.2.

OTHER LEE PLAN CONSIDERATIONS

The proposed amendments remove potential inconsistencies with **Policy 5.1.2** by allowing for design of residential structures to be adjusted accordingly where physical hazards such as flooding exists.

Objective 72.2 requires the county to “maintain land development regulations that reduce the vulnerability of development from the threats of natural and man-made hazards”. The proposed text

amendments are consistent with this policy by clarifying and allowing development standards that will reduce risk of damage to life and property from storm water.

The proposed amendments take into account Lee Plan **Chapter XII. Property Rights Element** by clarifying the ways in which property owners in Lee County can rebuild their property to the standards necessary to minimize future risk of property damage.

The proposed amendment does not change the number of residential dwelling units or the types of non-residential development that may be approved within the Captiva Community Plan Area. Appropriate uses within the Captiva Community Plan Area will continue to be determined by the Future Land Use Map as well as the objectives and policies within Goal 23.

PUBLIC FACILITIES AND INFRASTRUCTURE AVAILABILITY ANALYSIS

The proposed amendments will not increase density in the Community Plan Area, therefore there will be no significant impacts to public facilities and services.

CONCLUSIONS

The Lee Plan, with the proposed amendments, will provide for greater resiliency by allowing structures to minimize flood hazards through design and construction. The proposed amendments will impact the Captiva Community Plan Area by providing for consistent treatment of structures that require elevation and removing ambiguous language from the community plan. These amendments will not impact the community plan's intent to retain low-density development. The amendments are internally consistent with the Captiva plan and the Lee Plan as a whole, including Policy 5.1.2, Objective 72.2, and Chapter XII.

For the reasons discussed in this staff report, staff recommends that the Board of County Commissioners **transmit** the proposed amendment as shown in Attachment 1.

**PART 2
LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: May 22, 2023

A. LOCAL PLANNING AGENCY REVIEW

Staff provided a brief presentation addressing Board of County Commissioners' direction, reasons for and impacts of the amendment, consistency with the Lee Plan, and staff recommendation.

The LPA discussed the proposed amendments and various merits of the case, including the community meeting requirements for county-initiated amendments.

There was no public comment concerning the proposed amendment at the LPA Hearing.

B. LOCAL PLANNING AGENCY RECOMMENDATION

A motion was made to recommend that the Board of County Commissioners ***transmit*** CPA2023-00004. The motion passed 4 to 0.

RAYMOND BLACKSMITH	AYE
KEITH DEAN	AYE
DUSTIN GARDNER	ABSENT
DAWN RUSSELL	ABSENT
DON SCHROTENBOER	AYE
STAN STOUDE	AYE
HENRY ZUBA	ABSENT

C. STAFF RECOMMENDATION

Staff recommends that the BoCC ***transmit*** the proposed amendment as provided in Attachment 1.

**PART 3
BOARD OF COUNTY COMMISSIONERS
TRANSMITTAL HEARING**

DATE OF PUBLIC HEARING: June 21, 2023

The hearing scheduled for June 21, 2023, did not occur. At the regular Board of County Commissioners (BoCC) Meeting on June 20, 2023, the BoCC voted to continue the transmittal hearing on CPA2023-00004 until September 6, 2023. Staff was instructed to hold meetings with the public to discuss the proposed changes and listen to public comments prior to the September 6 hearing.

DATE OF PUBLIC HEARING: September 6, 2023

A. BOARD REVIEW:

Staff provided a presentation for the proposed amendment which included the purpose of the proposed amendments, anticipated impacts of the amendments, consistency with the Lee Plan, and staff recommendation.

Ten members of the public provided comments concerning the proposed amendments. Members of the public who spoke against the amendments were concerned the amendments could lead to an increase in density and intensity and development that is out of character with existing development in the Captiva Community Plan area. Members of the public speaking in favor of the proposed amendments stated the amendments were needed to provide certainty in order to rebuild following Hurricane Ian and changes to the FEMA flood maps for Lee County that became effective in November of 2022.

One member of the BoCC expressed disagreement with the amendments.

B. BOARD ACTION:

A motion was made to transmit CPA2023-00004 as recommended by staff and the LPA. The motion passed 4 to 1.

VOTE:

MIKE GREENWELL	<u>AYE</u>
BRIAN HAMMAN	<u>AYE</u>
CECIL L. PENDERGRASS	<u>AYE</u>
KEVIN RUANE	<u>NAY</u>
RAY SANDELLI	<u>AYE</u>

PROPOSED TEXT AMENDMENTS

FUTURE LAND USE ELEMENT

GOAL 23: CAPTIVA COMMUNITY PLAN. The goal of the Captiva Community Plan is to protect the coastal barrier island community's natural resources such as beaches, waterways, wildlife, vegetation, water quality, dark skies and history. This goal will be achieved through environmental protections and land use regulations that preserve shoreline and natural habitats, enhance water quality, encourage the use of native vegetation, maintain the mangrove fringe, limit noise, light, water, and air pollution, create mixed use development of traditionally commercial properties, and enforce development standards that maintain ~~one and two story building heights~~ and the historic low-density residential development pattern of Captiva.

Objective 23 through Policy 23.2.2 unchanged.

POLICY 23.2.3: Building Heights. Maintain building height regulations ~~established as of March 23, 2018~~ that account for barrier island conditions, such as mandatory flood elevation and mean-high sea level, for measuring height of buildings and structures.