

**MINUTES REPORT
LOCAL PLANNING AGENCY
June 23, 2014**

MEMBERS PRESENT:

Noel Andress (Chair)	Jim Ink
Dennis Church	Rick Joyce (Vice Chair)
Jim Green	David Mulicka
Mitch Hutchcraft	

STAFF PRESENT:

Peter Blackwell	Janet Miller, Recording Secretary
Brandon Dunn, Planning	Paul O'Connor, Planning Director
Michael Jacob, Asst. Cty. Atty.	

Agenda Item 1 – Call to Order, Review of Affidavit of Publication/Pledge of Allegiance

Mr. Andress, Chair, called the meeting to order at 8:30 a.m. in the Board Chambers of the Old Lee County Courthouse, 2120 Main Street, Fort Myers, FL 33901.

Mr. Michael Jacob, Assistant County Attorney, certified the affidavit of publication and stated it was legally sufficient as to form and content.

Agenda Item 2 – Public Forum - None

Agenda Item 3 – Approval of Minutes – May 19, 2014

Mr. Green made a motion to approve the May 19, 2014 meeting minutes, seconded by Mr. Hutchcraft. The motion was called and passed 7-0.

Agenda Item 4 – Lee Plan Amendments

A. CPA2013-00004 Corkscrew Ranch

Mr. Blackwell reviewed the staff report and recommendations.

Mr. Andress asked how close the existing water and sewer service was in relation to this property.

Mr. Blackwell stated there was a line running along Corkscrew Road which abuts the south side of the property.

Mr. O'Connor clarified there was a water line in front of the site but that the sewer service only comes up to the Corkscrew Woods entrance, now called "*Corkscrew Shore*" on the south side of Corkscrew Road.

Mr. Schropp (representing Harvey and Tim Youngquist) along with Tina Ekblad, Land Use Planner from Morris-Depew & Associates, and Kirk Martin, Hydro Geologist from Water Science Associates, gave a PowerPoint presentation. A handout was distributed (attached).

Mr. Church asked how many milligrams of phosphorous or nitrogen per gallon or per liter is released with a typical septic system.

Mr. Martin stated he did not have that answer at this time.

Mr. Church believed it was the County's goal to get rid of septic systems for groundwater/pollutant reasons.

Mr. Martin stated this was correct. He was not saying anything negative about septic tanks and wells in general as they do work in certain locations. However, in this instance, the property is located in the middle of Lee County's wellfields and the lines already exist. It seems as if it would be an easy answer to provide the water and sewer since it is already nearby. In addition, the discharge and potential pollution generated from septic systems will be eliminated.

Mr. Joyce asked what the future availability would be down this corridor as far as re-use water.

Mr. Martin felt it would be limited because the wastewater plants are a good distance west of this location. Although he cannot speak for Lee County Utilities, he is familiar with the planning process. He believed the County would be looking to mainly supply wastewater locally and not extend wastewater reclaimed water utility out this far. Mr. Martin stated that when he suggested there be a revenue source he was referring to it being elsewhere, not in this particular location.

Mr. Green asked if there was some other benefit to the applicant besides improving water quality as is being discussed today.

Mr. Schropp believed the applicant preferred not to utilize septic tanks and wellfield as it would affect the marketability of the property. It would be more marketable and a benefit to the owner if the property was on central sewer and water.

Mr. Church referred to the aerial and stated it appeared that there are currently no homes on the site.

Mr. Schropp stated the roads were in as well as the water management system, but there are currently no homes on the site.

Mr. Ink asked where the sewer line terminates.

Ms. Ekblad showed the LPA a slide on the PowerPoint and directed them to look at the entrance for this site. The line terminates immediately to the south.

Mr. Addresss opened this item for public comment. Public input was received from Steven Brodtkin and Carl Barraco.

Mr. Green stated the LPA had a long history of working to preserve our DRGR area and have had studies done where recommendations have been put in place. The current path is to keep the DRGR at minimum growth and minimum density. He felt the proposal before the LPA today is counter to that. Although he respected the desire for city water and sewer, he believed that benefit would be offset by the sprawl this proposal will cause and the opportunity to increase density on this property. If this is approved, there could be another issue that arises with the property located next door. He was in support of staff's recommendations.

Mr. Mulicka stated he had an opposite perspective on this. With this proposal, he felt the County would have better control over their water supply. It is safer and protects water better than a plastic pipe from leeching into the groundwater supply. Since it will be county maintained, the county has control over that and will have their own revenue stream and protection. It will be done at the developer's expense and their market risk if it is a good deal or not a good deal for what they have. He noted the applicant was not changing their footprint or their allowable use. They are only changing the utilities with lines that are already in place. The applicant is not competing with the wellfields that the County already has. By his calculations, the County has approximately 212 times the capacity in reserves that this property needs. It is a preferred service for what a homeowner would generally want at their home because the County maintains their own lines. With private wells and private septic tanks, the maintenance is up to the homeowner individually to maintain and not everyone maintains them as well as others. He believed each of these projects should stand on their own merits and noted this was one application regarding one subject. If something changes in the future, they will have to come back before the LPA but that is another subject for another time. Mr. Mulicka felt it was unreasonable and unfair not to approve this at this juncture.

Mr. Joyce stated you have the Lee County wellfield surrounding this site which is using both sandstone and shallow groundwater aquifer for water supply. He did not believe the County should want to put 50 septic tanks around that area. Since there are lines existing across the street and an existing approved platted subdivision, not a new subdivision, he was in support of the applicant's request.

Mr. Ink agreed with Mr. Mulicka and Mr. Joyce and was in support of the applicant's request. He was not in agreement that this step would create future sprawl. It should not be assumed that if it is allowed on this site, it will automatically be approved elsewhere and that the applicants would receive additional density. This approval is based on the current application before the LPA which is to extend the water and sewer. In his opinion, this was in the public's best interest in that it would eliminate septic by being included in the central sewer system. To him, this was an ideal situation.

Mr. Andress stated he appreciated staff's job on this staff report; however, he did not feel this was the application staff should use to "draw the line" on urban sprawl. Rather, this vote calls for a balancing of water resource issues versus future land issues. He believed the water issues outweighed the land issues. He was in support of transmitting this amendment request.

Mr. Church made a motion to transmit the applicant's proposed submittal, amend the basis and findings of facts, and take it to the Board of County Commissioners, seconded by Mr. Mulicka. The motion was called and passed 6-1. Mr. Green was opposed.

B. CPA2012-01 River Hall

Mr. Andress addressed the audience and stated this was a professional hearing. He hoped the public would be respectful of each other so that everyone would have the opportunity to provide their input without disruption. He also noted there as a sign-up sheet at the podium to the side of the room for anyone who wanted to receive future information/notification of the River Hall project.

Mr. O'Connor gave a brief overview of this item including background information.

Mr. Schropp and Mr. Depew reviewed this project with the LPA along with a PowerPoint presentation.

Mr. Andress noted that staff had made some comments regarding Policy 5.1.10. He asked for clarification on who really owns or is entitled to the unused suburban density. He noted staff also indicates there is a shrinking of the existing rural area within the development and that staff does not know the effect this amendment will have on additional properties.

Mr. Depew displayed a particular slide from the PowerPoint presentation and stated the problem with staff's approach is that they are considering this property Rural in the sense that rural property is deemed to be more or less agricultural. Although this property is Rural in name, it does not meet the criteria for Rural. The reality is that it is a Suburban development pattern. It is not some kind of agricultural community. It is a Suburban golf course community. He stated there was no possibility that farm estates will be built on this property. He noted it did not meet any of the compatibility requirements that would normally be anticipated for this area. It also does not make sense for them to leave the area open and blank. He referred to staff's comment that there is a problem with creating patchwork development. He stated this was due to how the regulations are written and there is nothing a developer can do about that. From a planning standpoint, he felt what was on the ground makes sense.

Mr. Mulicka asked the size of a typical platted lot in this subdivision.

Mr. Depew stated the lot size was approximately 125 feet to 135 feet depth in the River Hall Country Club, approximately 80 feet to 90 feet in width in Hampton Lakes, and approximately 105 feet to 120 feet in depth and maybe 60 feet to 75 feet range in terms of lot width. The average width is about 58 feet but the depth is the one that starts to change.

Mr. Church referred to the exhibit in the PowerPoint Presentation that was an early marketing graphic highlighted in yellow.

Mr. Depew stated that exhibit was a comparison of the currently approved Master Concept Plan and the original marketing plan.

Mr. Church asked what the previous applicant told the residents would be the total build-out.

Mr. Depew stated he was uncertain whether the previous developer informed the residents of the total number of units that would be constructed, but he noted that the exhibit was labeled as "*future development.*"

Mr. Schropp stated he believed the original website for this project indicated the build-out would be in the nature of 3,000 dwelling units. He referred to a comment from Mr. Andress regarding Policy 5.1.10. He stated they were not encouraging the LPA go in the direction of Policy 5.1.10. They were encouraging the adoption of Policy 5.1.11 which is the substitute language that staff came up with in the previous staff report. To them, the substitute language in Policy 5.1.11 addresses the concerns staff has with Policy 5.1.10. At this point, Mr. Schropp distributed a handout and reviewed it with the LPA (attached).

The LPA took a 10 minute recess at 10:40 a.m. and then reconvened at 10:50 a.m.

Mr. Andress opened this item for public comment but noted that each speaker would be limited to 3 minutes. He also reiterated that he wanted everyone to be able to express their viewpoints without feeling intimidated. Public input was received from William Redfern, Debbie Jackow, Connie Dennis, Ruby Daniels, Jim Giedeman, Ed Kimball, Steven Brodtkin, Joe Lundquist, Georgette Lundquist, Sandra Migliore, Shelly Albert, Derek Rooney, Karen Asfour, Wayne Daltry, Paul Asfour, Julianne Thomas, Max Forgey, B.J. Gerald, and Ralf Brookes.

Mr. Church referred to the assertion that the entity that signed the agreement with FDOT is not the same entity and, therefore, the current entity that owns River Hall is not obligated to build that signal. He asked if there had been any successor or clauses in the original permit.

Mr. Schropp stated that was included in the LPA's packet and was attached to Mr. Price's memorandum. He could find no provision making this binding on successors, assigns, or anyone else beyond the initial developer. He also noted the development went through a bankruptcy. If there was an obligation that FDOT felt was needed, they should have presented it at the bankruptcy. From reading the permit, he did not see anything that indicates it runs with the land and is binding to successors and assigns.

Mr. Andress referred to comments made by Mr. Schropp regarding the definition of "*Overriding Public Necessity*" in that he questioned the legality of the definition staff is presenting.

Mr. Jacob stated a person can define the term "*Overriding Public Necessity*" by looking at any definition that is reasonable. Both the applicant and staff have their own definition. With regards to the analysis for what is "*Overriding Public Necessity*" it does not end with the definition. You must look at the context in terms of where and how it is used throughout the plan. From that, you determine what the definition means. He felt staff did an excellent job with their analysis and definition. A second analysis would be to look at the provision in Policy 21.1.5 and decide what the "*Overriding Public Necessity*" would be for. Is it for this particular amendment? Is it for what the applicant is requesting? Is it for the circumstance of what the applicant is proposing along with the amenities they offer? What does it apply to? From a legal standpoint, we cannot require staff to require of applicants that they provide public amenities that are not site related in exchange for density. The County Attorney's office would strongly object to that.

Mr. Schropp referred the LPA to a handout he distributed, in particular, findings 9 and 10. The ultimate finding he felt the LPA should make in terms of "*Overriding Public Necessity*" is what is used in Policy 21.1.5. In Policy 21.1.15, the term "*Overriding Public Necessity*" means that the impact of the plan amendment on the existing rural character and rural land use in Caloosahatchee Shores is superseded by community needs that are achieved through the plan amendment.

Mr. Hutchcraft noted there had been a lot of discussion about Policy 21.1.5 and there is a proposal to add a sentence. In reading the added sentence, it seems to be to establish a future cap. In other words, going forward the development will not go above a certain amount. He asked for clarification as to whether that was the intent of the added sentence.

Mr. Schropp stated that was clearly the intent to say that River Hall will not exceed 2,850 units.

Mr. Hutchcraft stated one of the concerns expressed today was that the applicant is amending a community plan without going through the community plan review process. However, the applicant is merely trying to establish a future cap. If they do not establish a future cap and do not change the community plan, it would in theory eliminate the concern people had about the applicant changing the community plan without going through the community planning review process. He asked if that would be troublesome for the applicant.

Mr. Schropp stated that removing this sentence would not necessarily cause them any consternation, but it did cause some consternation when they previously went through this process.

Mr. Hutchcraft understood the applicant's predicament. On the one hand, having this clause in place provides certainty. However, removing it might be preferential if it addresses the public's concern about changing the community plan.

Mr. Schropp stated another possibility is to have this sentence about establishing a cap placed elsewhere, such as Table 1(a) that has the density table in the back of the plan. If it does not belong in Policy 21.1.5, perhaps it could be placed elsewhere.

Mr. Green referred to a comment made by Mr. Ralf Brooks regarding the LPA's legal ability to proceed without an appointee of the School Board at today's meeting.

Mr. Marc Mora from the School District stated the LPA does have representation from the School District at their meetings. The person is Dawn Huff who is a Long Range Planner. Mr. Mora stated that Ms. Huff normally attends all the meetings. She was unable to attend this particular meeting, so he was sent to attend in her place.

Mr. Green made the following comments:

- He commended staff for their quality report and their conclusion and felt they did an eloquent job.
- This area is one of the last bastions of rural areas in Lee County.
- The people in East Lee County are good citizens that have embraced growth consistently with projects such as Bonita Bay and Green Pointe's predecessor and not in an adversarial way. Rather, they worked in harmony to bring those nice developments into the community. It should be noted that they are not a "no growth" community. They are in favor of a "balanced growth" community.
- If we approve this project on its own merit and ignore the broader picture, then the County will be headed towards Fort Lauderdale. Every time the County provides "gift density," we are going somewhere over 1.5 million people. The value to a county of our rural lands is very significant. People are interested in purchasing lands in those rural areas because of the quality of life they offer. Any deviation from that is a detraction from our county and the wonderful reasons people come here.
- He believed approving the amendment presented today would set a precedence to undermine and subsequently eliminate community planning throughout Lee County. Many people have put in their time and effort to work on this community plan. They are people who are knowledgeable, informed, and doing the right thing for their communities.
- He noted this proposal is greatly opposed by the entire community as they feel there is no need for this and that it undermines our quality of life, particularly in Lee County.
- To approve this would show that Lee County does not care about rural lands, commitments made, or community planning.

Mr. Green concluded by saying that this proposal is clearly against the will of the people and it is the responsibility as LPA members to support the will of the people.

Mr. Mulicka made the following comments:

- He thanked everyone for their hard work and dedication in this process on both sides. He believed good arguments were made today.
- Although it is his understanding that the residents and neighbors for this area are involved, he only saw 4 people out of the 19 speakers who actually lived in River Hall out of 300+ residents.
- He referred to Policy 21.1.5 and noted that during last month's meeting when reviewing the Estero Plan staff and the LPA were careful in crafting language that would not be regulatory or punitive to a current land owner. The final decision is made by the Board of County Commissioners. It was meant to be a guide. With this proposal, terms such as "*an important aspect*" and "*it is a planned goal*" are used. The last part of the verbiage is critical because it says, "*no changes will be made after March 15, 2009 unless a finding of 'Overriding Public Necessity.'*" Although everyone is debating on what that means, this language clearly says that it will be determined by three members of the Board of County Commissioners.
- Previously, the applicant brought this before the Board of County Commissioners, but only 4 members were present and they had a 2-2 vote. The applicant would like to have a fair chance with a 5 member panel.
- He felt the applicant has tried to be cooperative. The Master Plan is already in place and there are fire stations in the area. In addition, they have utilities and infrastructure in place that were already built over capacity for what they already have because they anticipated what would be needed for the next phase of work. To him, this development proposal makes sense.

Mr. Andress clarified that no matter how the LPA votes on this item, it will still go to the Board of County Commissioners for review.

Mr. Joyce thanked staff for their staff report. He appreciated getting the history of what happened previously as well as the current analysis. Likewise, he felt Mr. Schropp and Mr. Depew were very professional and provided a good presentation with good arguments. Mr. Joyce stated he was a staunch supporter of rural areas and of agriculture, even though he was aware that agriculture was not a part of this particular site. He referred to Policy 21.1.5 and the issue of "*Overriding Public Necessity,*" and did not feel this proposal was consistent with that. He was concerned with how the precedent might apply to other community plans. Therefore, his position is to recommend non-transmittal.

Mr. Ink complimented staff and the representatives for River Hall. He stated that the Comprehensive Plan is our vision for the County. The Comprehensive Plan is written with specifics. In this case and in his opinion, there might be some unintended consequences of having "*Overriding Public Necessity*" as part of Policy 21.1.5. To him, necessity is "*need*" not "*benefit.*" There might be a need for a school, grocery store in a certain area, or a need for residential in an area that has a lot of commercial but not enough residential to support it. From that standpoint, everything that was presented was not a "*need.*" He looked at this proposal as not meeting that test. Therefore, he was going to vote to recommend non-transmittal.

Mr. Church made the following comments:

- He applauded the public for being involved in this process.
- This proposal involves changing the definition for "*Overriding Public Necessity.*" Since the LPA and staff make changes to the Comprehensive Plan all the time, he was not concerned with the proposal to make an amendment.

- He noted there were plenty of letters about the developer not keeping promises, but to him, this was not about the good developer or the bad developer, or how many golf holes there are, or how big the Clubhouse is. There is infrastructure in place, there are roads in place that do not currently have units on them, there are three roads that access this proposed area, and there is a 32% increase in external traffic generated. He stated the roads would fail with or without this proposal. To him, staff and DOT can figure out how to spend the impact fee money from this project.
- He was not concerned with the hurricane evacuation issue and noted that staff had not raised that as an issue. Most of the people are not here today to speak because many of them are residing elsewhere part of the year. Therefore, the actual population during hurricane season is not a big deal. The residents will not all be leaving the area at the same time.
- Mr. Church stated he was not swayed one way or the other by the benefits offered by the developer.
- He did not consider how many times the applicant has submitted and been denied, although he hoped this might be the last time it comes forward so that the community is not continually put through this process. However, due to previous attempts, it has caused this “*Overriding Public Necessity*” clause which was then “*piggy-backed*” into the other community plans.
- It clearly appears that the developer has always had a strategy to increase density after the DRI threshold increased. The Zoning Master Concept Plan for this project showed that density.
- He referred to the new process where it was remanded through mediation and stated that as long as the County Attorney and the Board of County Commissioners are fine with that, so is he.
- He referred to the issue of the CDD authorization or the HOA authorizations, and stated that if the County Attorney’s Office is okay with the authorizations and agents, then it is a non-issue.
- This project has no impact on groundwater.
- He had some concern that River Hall has more vacant developed lots than any project in the county, but did not think the County should use market forces to determine approvals for long term projects. Further, they have done away with the population/accommodation issues. He did not feel it was for the LPA to decide whether we need these lots or not. He did not blame the applicant for trying to finalize their entitlements. In reality, if this proposal is approved, the applicant might bring in a new builder who could bring in new products and amenities and could help jumpstart that community.
- He referred to the compatibility issue and stated he did not feel it was an issue. There are 4 units per acre to the south. The same kind of development goes all the way around the site. On the east side, the buffer between the actual Hickey Creek preserve at its thinnest is another 1,000 feet. There is a huge slough preserve on the east side of the property.
- Regarding density rights, there is some reference that if we approve this overall gross density we are taking away density from units that have been sold to someone else or taking something away from them. He felt staff left that as an open ended question. Mr. Church stated he dealt with this same issue in Collier County. They showed the County Attorney that everyone who buys a unit has a deed restriction that says they get 1 unit that cannot be subdivided. These are publicly recorded documents. Therefore, this does not seem to be a big issue.
- The gross density of 1.4 is not dense by any means and is a typical master plan golf community density. You are going to have higher density within enclaves. You are going to have 10 units an acre in some of the multi-family tracts, but overall, the Verandah next door is 1.25.
- This is not an urban development. Staff might lump that sub-outlying suburban as an urban land use, but it is not an urban density. Urban is 1 to 6 with a maximum of 10. Suburban is 1 to 6 with a maximum of 10. Outlying Suburban is 1 to 3. Sub-outlying Suburban is 1 to 2 units, which this proposal falls within.

- The text says this category is placed in communities where higher densities are incompatible with the surrounding area and where there is a desire to retain a low density community character. The proposal today achieves that.
- The Transit and response times are problematic, but he did not feel they rose to the level of warranting denial.
- Regarding the issue that this will create a precedent, he noted this was not a court of law where we are creating case law. Every case is going to have its own set of facts. Today's proposal has a very unique set of facts. There is a piece of a planned community that they want to build out in the same way the balance of the community is.
- Regarding the urban conversion issues, staff says it is going to convert 27% of the planning community to an urban category. However, he did not feel this was an urban form. In the previous staff report, staff considered the current character of the subject site to be a suburban golf course subdivision. The proposed amendment will not substantially alter this character. He was not sure why this comment did not make it into the current Findings of Fact.
- Staff also found that the development area of the subject site had been cleared consistent with the existing Master Concept Plan and approved Development Orders. The additional units will be constructed in areas already approved and cleared for development. This proposal puts units that might go elsewhere in an area that has infrastructure and that is planned. To him, this was good planning.
- To him, the issue of "*Overriding Public Necessity*," had to do with semantics. He did not have a problem with the Board of County Commissioners changing a clause in the Comprehensive Plan. He noted Mr. Schropp clearly identified that this proposal is based on a desire to maintain rural character and rural land use where it currently exists. He did not feel it made sense for master planned communities throughout Lee County to have this rural designation like The Brooks or Saddlewood Preserve. He noted this project is a mile away from State Road 80 and behind a gate. He believed the issue of "*Overriding Public Necessity*" had to do with more cars, more people, and more homes. He was not willing to vote against this project on that basis.
- Regarding the Community Planning Panel not reviewing this proposal, he felt they have and that we have heard from them today. He did not see the benefit in sending this back to the community for further review and then have it come back before the LPA.

Mr. Church stated he was in favor of recommending transmittal for this amendment and letting the Board of County Commissioners make the final determination.

Mr. Hutchcraft made the following comments:

- He complimented the community members for continuing to be active in this process and for sharing their perspective. He also appreciated staff's time and effort. In addition, he wanted to compliment the LPA members because he felt this was a beneficial process that gives reasonable people an opportunity to look at the issue and provide input.
- He believed it was possible for people to have similar desires and goals, but to view things differently. He did not believe the LPA's actions would destroy community character or diminish the community planning effort.
- There were comments that this approval would result in a precedent that could be applied in all other planning communities. Mr. Hutchcraft did not agree with that stating these were independent facts based on very specific issues within the context of the community plan.
- He stated that along with Mr. Joyce, he also had a strong desire to protect rural and agricultural lands. However, he looks at this project differently since it is property that is already impacted. It has roads, water, and sewer. It has similar residential densities around this parcel.

- If the density is kept down on that piece, you are likely to see pressure and impact on surrounding agricultural lands. We should encourage development to go where it is already impacted and where there is already infrastructure in place rather than encourage it to go somewhere else.
- He strongly supported wanting to maintain that rural character where it exists, but in his opinion, this location is not where rural character exists.
- He referred to the staff report and noted there were a few specific issues that staff relied on to come up with their recommendation of non-transmittal. The first one was the additional impact on habitat. Mr. Hutchcraft did not agree with this. The planning/permitting process has already identified the development and preservation footprint. The intensity of the development that would take place adjacent to the environmental areas was already evaluated. Staff prescribed setbacks and buffers, which the applicant is going to comply with. In addition, there have been discussions for two years on putting more people on impacted lands, so denying this proposal would be contrary to this goal.
- A second item in the staff report mentioned the compatibility issues. He believed that, effectively, what we will see is that net residential densities within the development pods in the proposed area are identical or compatible with the net residential densities with all the other home sites in the development. It is less dense than the property immediately to the south. It is also generally less dense than the property to the west. Therefore, he did not see a compatibility issue.
- The “patchwork” issue is one that from a planning perspective might seem troublesome. Mr. Hutchcraft noted he had worked with Mr. Mike McDaniels from the Department of Economic Opportunity. According to Mr. McDaniels, when it comes to planning and there is an opportunity for flexibility or there is not a clear cut approach, you have to apply common sense. Mr. Hutchcraft stated that, to him, it is common sense to put the land use categories where it makes sense and cluster that development. To him, it is common sense to put density in an area that is already impacted and planned for development.
- Regarding the definition for “*Overriding Public Necessity*,” he noted this is the biggest challenge. He noted there is currently no definition for that in the Comprehensive Plan. Both staff and the applicant came up with a defined definition. He referred to comments made by the County Attorney that the definition can be construed differently and that you must apply it given the context. What no one can disagree on is that there is no definition for this in the Comprehensive Plan. Therefore, he felt it was outside the bounds and context of the Comprehensive Plan for staff to identify their version as the set definition and say that it has regulatory impact.
- It is important to look at what the Comprehensive Plan currently says and to determine what is in the betterment of the overall community. To him, this proposal is an efficient use of already impacted land that has infrastructure in place that is capable of supporting this development.
- This proposal accommodates and enhances the preservation of natural resources, which is beneficial. It also puts a different land use category on significant acreage. In his opinion, this proposal is compatible with the other net residential areas within the community. It protects the greater community. It does not have an adverse impact on the rural or agricultural nature of the remainder of the community plan.
- This proposal is in furtherance of the phrase “*Overriding Public Necessity*” in that they are providing conservation and making pedestrian connections.
- He believed the applicant was responsive to the community by meeting with the public, hearing their concerns, and making changes to the park recommendations. They subsequently met with staff and changed how they treat the preserve area. He hoped this dialog would continue since he personally believed there could be a viable solution.
- He was supportive of staff’s proposal for Table 1b.

- He also accepts staff's recommendation from the first staff report regarding Policy 5.1.11.
- He proposed that the new language regarding the density cap in Policy 21.1.5 be placed somewhere else in the Comprehensive Plan.

In closing, with these provisions, Mr. Hutchcraft felt this proposal was a reasonable balanced approach that protects and furthers the overall community goal which is to preserve the rural character and agricultural land uses and puts development where impact has already happened.

Mr. Andress made the following comments:

- He thanked the public for their participation and was glad to see them be involved in the process. Mr. Andress noted that he had personally been involved in putting together the Pine Island Community Plan and had spent a lot of hours and expense during that process along with the others involved. He acknowledged his planning community would have felt neglected if the County chose not to be supportive of the Pine Island Community Plan.
- He stated this was one of the best staff reports he had reviewed during his time serving on the LPA. He stated that staff addressed his concerns in the staff report, which was a result of many conversations he had with staff on this subject. He felt staff put together a very concise report that clearly delineates why they do not recommend transmittal.
- In his opinion, we are already headed for a real problem with that development because of there being only one access along with a tremendous amount of traffic on SR 80.
- He referred to comments by the applicant that because of the previous owner filing bankruptcy they are not bound by all of the commitments that were made in terms of infrastructure. He noted there were a lot of infrastructure demands that were part of the approval. However, those problems still exist on SR 80 that were identified by Lee County DOT at that time. He recalled Mr. Loveland speaking before the LPA delineating millions of dollars worth of offsite costs that would be required to get the level of service on SR80 that would be able to sustain the traffic generated by this subdivision. These issues were never addressed.
- Regardless of the fact that past promises were never kept and previous issues were not addressed, the current proposal is to approve an additional 851 units. He noted there would already be traffic problems with the current units the property has which will only be exacerbated further by adding an additional 851 units. To him, it would be unconscionable to approve this request.

Mr. Andress stated he could not support transmitting this particular proposal because of the past history with this project.

Mr. Green made a motion that the LPA recommend non-transmittal of CPA2012-00001 based on the findings of facts by the staff, seconded by Mr. Andress. The motion was called and passed 4-3. Mr. Hutchcraft, Mr. Church, and Mr. Mulicka were opposed.

Mr. O'Connor stated that within the staff report that goes to the Board of County Commissioners there will be a fairly good summary of what everyone's points and issues were.

Mr. Hutchcraft asked that a copy of this staff report be provided to the LPA.

Mr. O'Connor stated staff would supply a copy to the LPA upon its completion.

Agenda Item 5 – Other Business

Definition for Overriding Public Necessity

Mr. Address noted that some members of the LPA seemed to want a motion regarding the policy of changing the definition for “*Overriding Public Necessity*.” He opened this for discussion.

Mr. Ink felt it needed to be addressed and clearly defined. He could have voted to recommend transmittal for this project but felt compelled not to because of that language.

Mr. Address asked for guidance from the County Attorney’s Office.

Mr. Jacob stated the LPA could make a motion to amend the definition or eliminate it all together. He cautioned that the LPA should not create something that has not been advertised for the public to comment on.

Mr. Address felt it best to ask the Board of County Commissioners to direct staff to address this issue and come back with something for the LPA to review.

Mr. Green made a motion to recommend that the Board of County Commissioners include the staff definition of “*Overriding Public Necessity*” into the Comprehensive Plan glossary. The motion failed for lack of a second.

Mr. Address preferred asking the Board of County Commissioners to direct staff to produce a definition that can be considered by the LPA rather than taking the one that has already been put together. If it turns out that the one they want to use is the one that staff has already produced, then that is up to the BOCC, but he did not want to limit them. The main purpose is to have this defined for future applications.

Mr. Ink made a motion to ask the Board of County Commissioners to direct staff to come up with a definition for “*Overriding Public Necessity*” in the community plans to be included into the Comprehensive Plan as an amendment, seconded by Mr. Joyce.

Mr. O’Connor believed it should be implicit in the motion that we want some direction from the Board of County Commissioners to staff as to how to proceed with identifying that definition.

Mr. Mulicka asked for a slight amendment that we not merely ask for a definition of the words that can be interpreted in many different ways, but an example, some type of litmus test to help us actually accomplish something.

The motioner and seconder accepted the amendment.

Mr. Hutchcraft stated it was important that whatever definition the Board considers or directs staff to provide, he hoped they would recognize they have discretion and that they have an opportunity to evaluate the facts. In speaking with many land owners, they believe the Board does have discretion where it makes sense and where they have determined “*Overriding Public Necessity*.” Since it is an undefined term, there is some flexibility by nature. If staff moves forward with their current proposal, and the Board adopts it, there is very little flexibility in that definition. It should be that we ask the Board for some direction by asking them what they want us to move forward with and not have it be a staff definition.

Mr. Andress and Mr. Ink stated that was what we were asking for. **The LPA requests that the Board of County Commissioners direct staff on what their interpretation of “*Overriding Public Necessity*” is and to provide direction to staff.**

The motion was called and passed 6-1. Mr. Church was opposed.

Conduct of Meeting

Mr. Church stated it was great to see this meeting handled in a very organized, behaved, and thoughtful manner especially since we had a very controversial case.

Agenda Item 6 – Adjournment

The next Local Planning Agency meeting is scheduled for Monday, July 28, 2014, at 8:30 a.m. in the Board Chambers, Old Lee County Courthouse, 2120 Main Street, Fort Myers, FL 33901.

The meeting adjourned at 1:14 p.m.

Proposed Findings of Fact & Basis for Plan Amendment

1. Utilities and other infrastructure within River Hall have been sized and installed to accommodate the proposed additional density, and the plan amendment will allow for a more complete and cost effective utilization of existing public infrastructure.
2. The additional density permitted by this plan amendment will be developed on lands that are shown as, and permitted for, residential development and will not expand into environmentally sensitive areas within the community.
3. The additional units permitted by this plan amendment will be located in the unplatted area in the south and west parts of River Hall. The requested amendment is compatible with the adjacent residential developments to the south and west.
4. The reclassification of 417 acres to Conservation Lands categories will provide additional environmental protection for these lands, and a conservation easement will be required over an additional 68 acres that are presently not under conservation easement.
5. No changes are proposed to the existing boundaries of upland and wetland preserves as a result of this plan amendment.
6. No changes to common open space will result from this plan amendment.
7. The areas to be placed in Conservation Lands classifications provide suitable habitat for various protected species. Potential impacts from human/wildlife interaction can, and should, be addressed through the PD zoning amendment process through the provision of applicable management plans and resident education materials for listed species.
8. The plan amendment will facilitate the use of transit, bicycle, and pedestrian modes of transportation by providing a multi-modal trail, bike paths, and park-n-trail facility. These improvements will facilitate alternate modes of transportation to shopping, transit stops, parks, a public library, and other communities within Caloosahatchee Shores.
9. The amendment will not impact the existing rural character or existing rural lands within the Caloosahatchee Shores Planning Community. All additional residential development permitted by this plan amendment will occur "behind the gates" of an existing suburban golf course community.
10. Through the proposed Development Agreement, the plan amendment will accomplish significant public improvements and benefits that are identified as needs in the Caloosahatchee Shores Community Plan, the Lee Plan, and elsewhere.

2. BASIS AND FINDINGS OF FACT

- The residential lots on the subject property were originally created in 1989 by Development Order DOS891201800D.
- The subject property is located in the Density Reduction Groundwater Resource and Wetlands future land use categories, and surrounding properties are all-in the Density Reduction Groundwater Resource (DR/GR), Wetlands, Conservation Lands Upland, Conservation Lands Wetland and Suburban future land use categories.
- The residential lots are large enough to support well and septic systems.
- ~~There is no demonstrated need for potable water and sanitary sewer service for this subdivision.~~
- The subdivision is inconsistent with the current Future Land Use Map in that it exceeds the currently permitted density for the DR/GR future land use category. However, the 1989 development order for the subdivision was approved before the subject property was placed in the DR/GR category and a plat was approved for the 59-lot subdivision in 2007. The subdivision is vested from the density requirements of the DR/GR classification.
- A water line presently exists and a sewer line is under construction within Corkscrew Road adjacent to the subject property. Accordingly, both water and sewer service are, or will shortly be, available to the subject property.
- There is sufficient plant capacity to provide water and sewer service to the subject property.
- The connection of this subdivision to public water and sewer will provide a public benefit by providing the County with additional control over potable water resources, by eliminating the potential for discharge from 59 septic tanks, and by promoting reuse.
- The proposed plan amendment is consistent with the Lee Plan's stated policies of eliminating septic tanks where central sewer is available; encouraging existing development to connect to central sewer when it is adjacent to the property; promoting reuse water; and encouraging rural subdivisions to connect to public sewer and water when it is adjacent to the property (Policies 33.3.3; 54.1.6; 54.1.7; 56.2.1; 56.2.2; and Goal 60).

6/23/14

RE: River Hall

LPA Members,

The Concerned Citizens of Bayshore Community remains opposed to the transmittal of CPA2012-00001, (River Hall). There have been no significant changes since the last application when the LPA recommended (6-0) against transmittal and the BOCC did not transmit.

The amendment is clearly inconsistent with the Caloosahatchee Shores Plan and the Lee Plan as demonstrated below.

1. The proposed amendment does not retain the Caloosahatchee Shores rural land use where it currently exists, making it inconsistent with the Caloosahatchee Shores Plan.

POLICY 21.1.5: One important aspect of the Caloosahatchee Shores Community Plan goal is to retain its' rural character and rural land use where it currently exists. Therefore no land use map amendments to the remaining rural lands category will be permitted after May 15, 2009, unless a finding of overriding public necessity is made by three members of the Board of County Commissioners.

2. There is clearly no overriding public necessity. Staff's conclusion in the reanalysis of "overriding public necessity" found that the need for additional units, and not the need for public amenities, should form the basis of the interpretation. There is clearly no need for additional units in Fort Myers Shores.

3. Throughout the entire EAR and New Horizon 2035 process County Staff has not recommended changes to the Land Use Map for any land use categories in River Hall. If there had been a need we would have expected Staff to recommend a change.

4. Please note the Staff's findings of fact on pages 5 and 6 of the Staff Report which includes the following:

The Proposed amendment would result in densities greater than one acre in the areas remaining in the Rural future land use category.

The proposed amendment would create several small enclaves of future land use categories.

The amendment would remove approximately 27 percent of the Rural lands category from the total Rural designation in the Fort Myers Shores Planning Community.

The term “overriding public necessity” was intended to have a strict meaning designed to protect the rural character of the community from amendments that will intensify development.

Staff’s analysis defines “overriding public necessity” as: An unavoidable or indispensable need of all the people of Caloosahatchee Shores that requires precedence over other considerations or interests.

The re-designation of the land from Rural to Sub-Outlying Suburban will change the future land use category from a non-urban category to an Urban one, resulting in additional unfunded needs.

The amendment will allow the addition of 851 residential units adjacent to areas that are documented to contain endangered, threatened, or species of special concern including: gopher tortoise; burrowing owl; American Alligator; Florida Sandhill Crane; listed wading birds; and, Florida Scrub Jays.

So, clearly the proposal is not consistent with the Lee Plan and should not be recommended for transmittal.

Lee County has spent hundreds of thousands of dollars in grants to community groups for community planning. Community Planning Panels have put years of voluntary effort into planning for the future of their communities. The County has placed an enormous effort into the EAR and the New Horizon 2035 Plan. The whole purpose is to plan for the future. If we don't adhere to the plan, all of the effort will have been squandered and we have no plan.

We want to thank Staff for such a thorough analysis of the application and their recommendation to the LPA.

We ask that you follow Staff’s advice and recommend to the BOCC they **not transmit** the River Hall plan amendment.

Thank you,

Steve Brodtkin

President CCBC

(Concerned Citizens of Bayshore Community)

Lee Public Voice Participant

LPA Members of Lee County

June 23, 2014

First, I have been a River Hall owner resident since Dec. 2006. Second, I wish to express my thanks to the Lee County Staff for their definition of "OVERRIDING PUBLIC NECESSITY" for the "Shores" community and their thorough and complete evaluation and analysis of the amendment on the floor. I strongly concur with "staffs" conclusion that the Amendment CPA2012-00001 should not be transmitted.

I next want to read an excerpt from staff report for CPA2012-01, page 16.

"If the amendment is approved the land remaining in the Rural category will become inconsistent with paragraph 2 of Policy 5.1.10. This paragraph prohibits density that exceeds the allowable density in non-urban category. In accordance with this provision the existing RPD was conditioned to assure that the number of units in the Rural category did not exceed one unit per acre. A result of this amendment is the shrinking of the existing Rural area within the development. Staff has determined that there are 288 existing units and 581 vacant platted lots in the remaining Rural area. Staff has also calculated that the remaining Rural is 637.66 acres, resulting in a density of approximately 1.32 units per acre. This would make the remaining Rural area inconsistent with the Lee Plan density provisions."

In addition to this inconsistency, which is HUGE to me, is the larger effect that approval of this amendment would set a huge precedent for overturning community plans now in effect versus the big bucks of and to developers. These plans have been formulated over many years and if we break this one they could all tumble like dominos.

I bought Rural back in 2006 and I expect it to remain Rural.

Thank you.

Joe Lundquist
17005 Sunny Lakes Court
Alva, FL 33920
239-634-1593

First of all I would like to thank all of you for your service to the county and its residents. It does take a lot of time to do a job such as this even though it is not a fulltime paying job.

I would also like to give kudos to the County Staff, especially Senior Planner Brandon Dunn, for the very thorough and detailed study he and his staff did on this latest of the many amendments that have come before them from the developers of the River Hall community asking for the increased density. Staff are professionals in their fields and very knowledgeable about the communities and what impacts any changes have on all of Lee County and its community plans. Just as your time and talents are involved in making a decision such as this one, there are many people who have spent many years drawing up the many Community Plans to fit in with the Lee County Plan for the long term views of what is best for Lee County, its land and its residents.

In the Staff report on page 25 of 36 you will find a list of all the available lots within the Caloosahatchee Shores Community Plan District in East Lee County. On that list you will find that within 4 areas platted for development there are 4313 of the 4950 existing lots that are already approved for development. The 4 major areas are River Hall - 1666 lots, Verandah - 785 lots, Buckingham 345 - 690 lots and Portico - 1172 lots. These are already approved for building by the county. Also within these areas only 20% of all the original available lots has actually been built on. In fact, in River Hall only 16.6% or 333 of its original 1999 lots have homes on them now. I have made copies of a map for all of you, Attachment 3 of the staff report. It is even strange to me that looking at the map there is a perfect west to east corridor from Verandah to River Hall which includes all of these 4 properties I am referring to.

Reading farther in the staff report they say - and I quote- "This large number of approved yet unbuilt units leads staff to conclude that currently there is not a need to increase allowable densities to add even more dwelling units within this planning community.

The applicant has not justified or provided an analysis of public need for additional dwelling units, let alone an overriding public need for more units.”

Thank you for your time and I am hoping that you will agree with and pay very close attention to what the staff report has said about this property of River Hall. Staff are the ones who have studied all the aspects of the changes the developer wants to make. Please vote with the County Staff and vote NO on transmittal.

Georgette B. Lundquist, owner/resident of River Hall since 2006

17005 Sunny Lakes Court, Alva, FL 33920

239-590-6927

jglundy7@gmail.com

An unavoidable or indispensable need of all the people of Caloosahatchee Shores that requires precedence over other considerations or interests.



Need for Additional Dwelling Units

In this case, the applicant is seeking a land use map amendment to permit additional residential density on the subject Property. Staff finds that the “overriding public necessity” requirement requires an analysis of the need for the actual land use amendment that is being requested and not the need for public amenities being offered.

There are already thousands of acres of designated vacant urban land to the south and west of the subject site. These lands, in addition to being designated for urban/suburban uses are already zoned for residential uses. The River Hall property is currently zoned for 1,999 dwelling units; but, at the current time only 333, or about 16.6 percent, of these units have been constructed.

The Caloosahatchee Shores area contains several older developments that were platted prior to the county’s current Development of County Impact regulations or were developed under conventional zoning districts. Some of these include Fort Myers Shores, which is the largest of these subdivisions; Riverdale Shores; Paradise Shores; River Forest; and, Hawks Preserve. Most of these subdivisions are fairly built out, with occasional vacant parcels scattered throughout.

The newer developments, approved under Planned Development zoning, are not as fully developed. The table below identifies more recently approved Planned Developments that include residential dwelling units within the Caloosahatchee Shores Planning area.

	Approved Zoning	Active Permits	Unbuilt
Project	Dwellings Units	or Occupied	Units
✓ Buckingham 345	690	0	690
Caloosahatchee Estates	90	0	90
✓ Portico	1,178	6	1,172
✓ River Hall	1,999	333	1,666
River Pointe	140	0	140
✓ Verandah	1,700	915	785
Hemingway Pointe	207	0	207
SR 31 Multi-Family RPD	60	0	60
Marina Del Lago	140	0	140
Total Units Area Wide	6,204	1,254	4,950
Percentage of Total Units		20%	80%

*See Attachment 3 for the location of the identified developments.

Quote

“ This large number of approved yet unbuilt dwelling units leads staff to conclude that currently there is not a need to increase allowable densities to add even more dwelling units within this planning community. The applicant has not justified or provided an analysis of

any public need for additional dwelling units, let alone an overriding public need for more units." Based on the information above, Staff finds that there is not an overriding public necessity for additional dwelling units. Staff recommends that the Board of County Commissioners find that there is not an "overriding public necessity" for this plan amendment based on the need for increased density or additional housing units.

Developer Agreement Commitments

In an effort to show an overriding public necessity under Policy 21.1.5, the applicant has offered to construct a number of improvements through a developer's agreement ("Agreement"). The apparent purpose for offering these commitments is to identify community needs and use the construction of those public amenities as a basis for meeting the overriding public necessity requirement. The revised Agreement dated May 12, 2014 is included in the application materials.

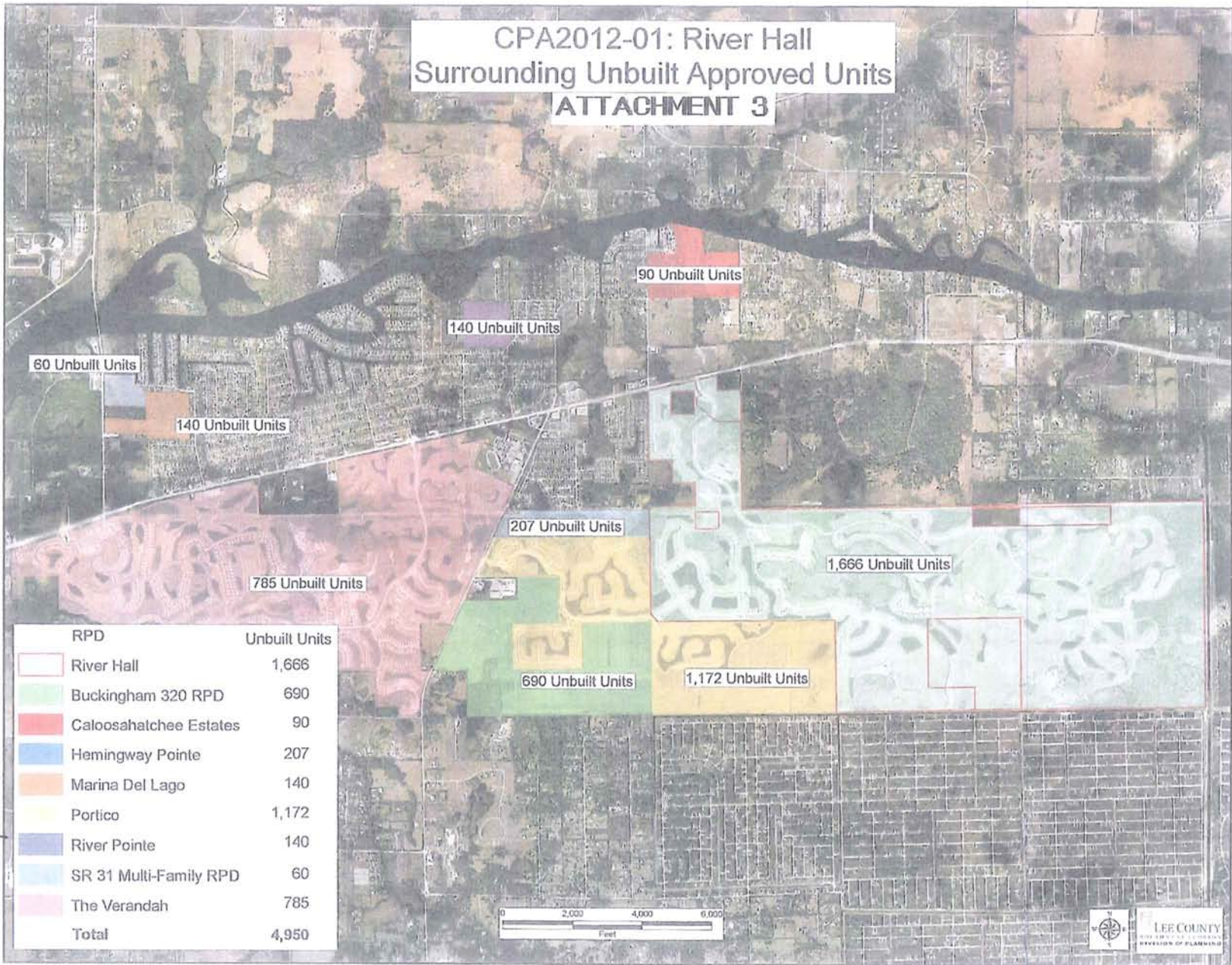
The applicant did not provide an analysis on whether there is an overriding public necessity for the land use amendments sought under this application (ie need for additional density). As stated above, staff finds that the analysis required under Policy 21.1.5 concerns the public necessity for the amendment itself, not the necessity for the benefits offered by the applicant. Notwithstanding, staff has reviewed the proposed commitments and does not, for the reasons stated below, find that there is an overriding public necessity for each of the improvements offered.

A. Funding of Traffic Signal at State Road 80:

The applicant is committing to construct a traffic signal at the entrance of the River Hall community on State Road 80. The traffic signal at the intersection of River Hall Parkway and State Road 80 was required as part of the FDOT connection permit issued on February 2, 2005 for development of the River Hall project. This permit was issued based on previous zoning approvals for 1,999 dwelling units. In 2005, a special provision of the connection permit required that the developer pay for and construct the signalization of the intersection once traffic warrants were met. On April 29, 2014, after issuance of the previous staff report and public hearings on this request, FDOT notified Lee County staff that traffic warrants have been met and the applicant is now required to fund the design and construction of the traffic signal. The warrants were triggered as a result of current development within the project and the applicant would be required to construct these improvements regardless of whether the proposed Plan amendment is granted.

The Development Services Staff Engineer has also provided that, while constructing the signal at the intersection of River Hall Parkway and State Road 80 will provide some benefit, the benefit received from the signal will be localized and largely received by the residents of River Hall entering and exiting River Hall Parkway. However, the introduction of a traffic signal will degrade the through capacity of State Road 80 and have a negative effect on other residents within the Caloosahatchee Shores community. Staff does not find, even assuming the overriding public necessity requirement applies to the benefits offered by the applicant, that the signalized intersection is an overriding

CPA2012-01: River Hall
 Surrounding Unbuilt Approved Units
ATTACHMENT 3



RPD	Unbuilt Units
River Hall	1,666
Buckingham 320 RPD	690
Caloosahatchee Estates	90
Hemingway Pointe	207
Marina Del Lago	140
Portico	1,172
River Pointe	140
SR 31 Multi-Family RPD	60
The Verandah	785
Total	4,950

Unbuilt
 River Hall 1666
 Buckingham 690
 320 RPD
 Portico 1172
 Verandah 785
Total 4313

My name is Connie Dennis and. I live off Bateman Road that borders the Mitigation Park on the East I have lived there for 30 years and have spent many hours with my friends hiking through the park and going over to the land now known as River Hall. I cannot impress on anyone how beautiful and peaceful it is, and we welcomed the variety of wild life we saw on our walks—deer, wild turkeys, a wide variety of birds, gopher turtles, snakes, including the nearly extinct indigo, and of course wild hogs. These are beautiful memories and we are happy to share our experiences with the current residents of River Hall. People who choose to live in rural areas expect there to be a place for wild life to live and thrive.

I am secretary of Alva Inc and have been actively involved in working on our community plan for the past 7 years. I know the amount of work and energy that takes place to complete a comprehensive plan. I have reviewed the Lee County Staff review of CPA2012-01 and am extremely impressed with the amount of information that has been so carefully examined. These people deserve a group doctorate for the Division of Planning!

→ and that is why I support the Caloosa Shores comprehensive plan.

There are a few points in their review that I would like to applaud. First, as a former teacher, I am happy to see dictionaries used to come up with a definition for “overriding public necessity” and then applied to the Caloosa Shores Community Plan as “An unavoidable or indispensable need of all the people of Caloosahatchee Shores that requires precedence over other considerations or interests.” And then the staff brought up the point that there are currently 4,950 units in and around River Hall that are unbuilt, 1,666 in River Hall alone. This does not seem to be an unavoidable need for all of the people of Caloosahatchee Shores!

I would also like to add that as a former teacher, I have a great deal of empathy for others. In regard to the proposed amendment request, I empathize with the wildlife. According to the staff report, there would be increased residential density near the Hickey Creek Mitigation Park. This is where there are so many beautiful trees that house so many of the wildlife I referred to earlier. It is close to the canal where water is available, and right across the canal from the mitigation park that is only one of two nesting spots in Lee County for the shy scrub jays. I would hate to see these animals’ homes gone.

I also empathize with the residents of River Hall who never can rest with the knowledge of what will happen to their beautiful community. This is the fourth time the proposal for increased density in River Hall has come before the Board of County Commissioners after being rejected the first 3 times. They must have wanted to live in a rural community or they wouldn’t have bought property there. I’m sure it is frustrating to keep coming to meetings to defend their property rights.

I hope you as members of the Local Planning Agency have closely examined this extensive staff report and agree with their recommendation that the Board of County Commissioners **not transmit the proposed amendment. Thank you for your attention.**

Connie Dennis
6-23-14



Burrowing owls nesting
at River Hall C.C

