

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20031310

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt a resolution approving a proposed interpretation of Lee Plan Objective 17.1, relating to public facilities in Buckingham

WHY ACTION IS NECESSARY: The Board of County Commissioners must render the final decision as to the correct interpretation of provisions of the Lee Plan. (Chapter XIII, Lee Plan)

WHAT ACTION ACCOMPLISHES: See above.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #5

A4A

3. MEETING DATE:

11-18-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER
- Lee Plan, Chapter XIII

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT Community Development
 - C. DIVISION Planning
- BY: Paul O'Connor, AICP, Director
Poc 11/5/03

7. BACKGROUND:

The Director of Planning requested a legislative interpretation of the provisions of Objective 17.1. The Comprehensive Plan Annotation Committee held two advertised public meetings, on July 8, and August 29 of 2003, where interested parties were allowed to participate. The committee offered both a majority and minority opinion. The Local Planning Agency heard the matter at its September 22, 2003 meeting and voted 6 to 0 to accept the majority opinion, with one LPA member absent. The majority opinion states that public facilities, such as schools, are not allowed in the Buckingham Rural Preserve without first obtaining a change in the future land use category to Public Facilities.

Attachments:

- Memo to Board of County Commissioners from Paul O'Connor
- Excerpt from the Lee Plan "Legislative Interpretations of the Plan"
- Resolution to Adopt the Interpretation

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

| A Department Director | B Purchasing or Contracts | C Human Resources | D Other | E County Attorney | F Budget Services | | | G County Manager |
|-----------------------------|------------------------------------|-------------------------|------------|-------------------------|----------------------|----------------|----------------|---------------------|
| <i>Mam (11/5/03)</i> | N/A | N/A | N/A | <i>[Signature]</i> | <i>OA</i> | <i>OM</i> | <i>Risk</i> | <i>GC</i> |
| | | | | | <i>11/5/03</i> | <i>11/5/03</i> | <i>11/5/03</i> | <i>11-5-03</i> |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

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| Rec. by CoAtty |
| Date: <i>11/5/03</i> |
| Time: <i>10:27 AM</i> |
| Forwarded To: <i>CO ADMIN</i> <i>11-5-03 11:28</i> |

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| RECEIVED BY COUNTY ADMIN: <i>TD</i> |
| <i>11/5/03</i> |
| <i>11:25am 367</i> |
| COUNTY ADMIN FORWARDED TO: <i>BT</i> |
| <i>11/5 400</i> |

DIVISION OF PLANNING



LEE COUNTY

MEMORANDUM

S O U T H W E S T F L O R I D A

to: Board of County Commissioners
from: Paul O'Connor, AICP, Director
subject: Annotation of Lee Plan Objective 17.1.
date: Friday, October 31, 2003

The Lee Plan Comprehensive Plan Annotations Committee conducted a public meeting on July 8, 2003 and again on August 19, 2003 to consider an annotation of the following Lee Plan objective.

LEE PLAN OBJECTIVE 17.1 STATES:

The primary land use designation for the Buckingham area is "Rural Community Preserve." Public Facilities have also been designated as appropriate. After the adoption of this amendment, no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners. (Amended by Ordinance No. 00-22)

QUESTION:

Given the provisions of Objective 17.1, are public facilities, such as new schools, permitted in the Buckingham Rural Community Preserve future land use category without first obtaining a future land use map amendment to the Public Facilities future land use category?

ANSWERS:

Majority Opinion:

No.

Reasoning:

The *Buckingham Sector Plan*, conducted by the "Buckingham Preservation Committee" was the planning study that provided the data and analysis to support the Buckingham Goal and its subsequent policies. A review of this document was conducted to insure that the legislative intent of the Board of County Commissioners, which adopted the Buckingham Plan, would be understood and applied.

The sector plan contains a discussion of the existing and probable future public facilities in and near the Buckingham area. This discussion immediately followed the original version of this proposed objective. The sector plan states:

"Buckingham has not been opposed to accommodating needed public facilities, as evidenced by the existing Mosquito Control Complex, Sunland Center, the Buckingham Exceptional Student Center, LCDOT Depot #2, and two previous land fills. Buckingham has done its fair
Objective 17.1

Page 1 of 3

share in providing for these needed public facilities, and if Buckingham is going to be asked to accommodate any more in the future, it should at least be done by a unanimous vote of the Board of County Commissioners.” (Note: the “unanimous vote” language was changed to “three members of the Board of County Commissioners” in the adopted language)

It is clear that inclusion of any additional public facilities, including a school, requires a finding of overriding public necessity and the only way to achieve this finding is through the Lee Plan amendment process.

Policy 2.1.3 states:

“All land use categories and Planning Community Map areas permit the consideration of churches and schools (except in Wetlands and Airport Noise Zones), public uses and buildings, public utilities and resource recovery facilities, public recreational uses (including franchised quasi-commercial uses in conjunction with a public use), and sites for compatible public facilities when consistent with the goals, objectives, policies, and standards in this plan and applicable zoning and development regulations.”

This policy might be interpreted to allow schools, and other public facilities, in the Buckingham Rural Preserve. However, the provisions of Objective 17.1 that state “no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities)” are more strict and therefore override the general provisions of Policy 2.1.3.

Minority Opinion:

Yes, as to schools so long as the schools are needed to serve the rural community.

Reasoning:

Policy 2.1.3 is quoted above. This policy recognizes the responsibility of local government to properly respond to the needs of the public health, safety and welfare. It applies in “all land use categories” unless superseded by other specific language in the Lee Plan. Under this policy, schools may be located in any land use category without the need of amending the Plan to change the land use category. Without this policy, it would be necessary to list such public facilities as permitted uses within the descriptions of each land use category in the Plan. The policy acknowledges that the needs of public infrastructure cannot be reliably predicted and may require action faster than would be possible if a Plan amendment had to be adopted for every public facility site.

Goal 17 (Buckingham) of the Lee Plan places specific limits on public facilities related to roads and water and sewer service. See objectives 17.2 and 17.3. Under accepted principles of statutory interpretation, the specific will control the general. Therefore, these specific statements will control over the general provisions of policy 2.1.3.

However, Goal 17 does not *specifically* limit schools within the rural preserve. The majority opinion assumes that objective 17.1 prohibits schools because it says that “no land in Buckingham will be changed to a land use category more intense than Rural Community Preserve (including Public Facilities) unless a finding of overriding public necessity is determined by three members of the Board of County Commissioners.” As noted above, under policy 2.1.3, schools are a permitted use in all land use categories and without the need of changing the site to the Public Facilities land use category. Therefore, objective 17.1 does not apply.

There is language in the Lee Plan that would affect the general language in policy 2.1.3. It is found in policy 1.4.3. This policy describes and defines the Rural Community Preserve and lists the types of uses allowed. It says that: "These areas are restricted to low density residential uses (with minimum lot size requirements), agricultural uses, **and minimal non-residential uses that are needed to serve the rural community.**" (emphasis added) This language limits public facilities that would otherwise be allowed under policy 2.1.3 without a land use category change. With regard to locating a school in Buckingham, this language would require the School Board to demonstrate that the school is needed to serve the rural community. If so, then the school is allowed without the need for a land use category change or the finding of overriding public necessity needed to support such a change. If not, then the School Board would need to apply for a land use category change to Public Facilities.

LOCAL PLANNING AGENCY:

The Local Planning Agency reviewed the Annotations Committee majority and minority opinions at their regular meeting of September 22, 2003. There were no comments from the public. Following deliberation by the Agency they voted 6 to 0 to accept the majority opinion, with one LPA member absent.

LEGISLATIVE INTERPRETATIONS OF THE PLAN

In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the Board of County Commissioners which adopted the plan be understood and applied by subsequent boards, county employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which should be a companion to the plan itself. These goals will be accomplished by the procedures which are set forth below:

A. COMPREHENSIVE PLAN ANNOTATIONS COMMITTEE.

The Director of Community Development, the Planning Director, and the County Attorney will together be empowered to sit as the Comprehensive Plan Annotations Committee. In each instance, these persons may designate one or more subordinates to serve in their place, but only one vote may be cast by or on behalf of each of the aforementioned officials. The purpose of the committee is to make written recommendations to the Local Planning Agency in response to requests for interpretations of specific provisions in the plan. If the committee cannot recommend an interpretation unanimously, then both a majority and minority recommendation will be made to the Local Planning Agency. Similarly, if the committee cannot reach a majority position with respect to an interpretation, then each official will submit a separate recommendation to the Local Planning Agency. In accomplishing its work, the committee will operate as follows:

1. Organization

The committee will meet regularly at such times and places as it may choose. Its meetings will be either private or open to the public, or a combination thereof, as the committee chooses. The committee will have total discretion in this matter. No public notices of its meetings will be required. It may invite to its meetings such persons as it believes will best assist it in its work. It is intended that the committee will function in an informal workshop atmosphere, with emphasis to be placed on the timely production of concise, written recommendations to the Local Planning Agency in response to requests for interpretations of specific provisions in the plan. The County Attorney will be responsible for reducing the recommendations of the committee in writing, unless he is in the minority, in which case the Planning Director will be responsible for reducing the majority recommendation to writing. In every case, the Planning Director will be responsible for delivering the recommendations to the Local Planning Agency on a timely basis as part of the published agenda of the Local Planning Agency.

2. Requests for Interpretations

Requests for interpretations will be placed before the Comprehensive Plan Annotations Committee by any one of its three members in response to a question raised by the Board of County Commissioners, collectively or by any one commissioner, by any member of the county administration who is responsible for administering the plan, by the Local Planning Agency, by the Lee County Hearing Examiner, or by any applicant for a type of development regulated by the plan. In each case, the Planning Director will be

responsible for reducing the questions to writing and, to the extent possible, linking them to specific plan provisions which might affect the answer.

B. LOCAL PLANNING AGENCY.

Upon receiving the recommendations from the Comprehensive Plan Annotations Committee, the Local Planning Agency will review the same and forward them to the Board of County Commissioners with such comments and recommendations of its own that the Local Planning Agency believes to be appropriate.

C. BOARD OF COUNTY COMMISSIONERS.

Upon receiving the recommendations of the Comprehensive Plan Annotations Committee, with such other comments and recommendations as the Local Planning Agency submits with the committee's recommendations, the Board of County Commissioners will render a final decision as to the correct interpretation to be applied. This interpretation will be that which is adopted by absolute majority of the Board of County Commissioners and, upon being reduced to a board resolution drafted by the County Attorney in response to the board majority, it will be signed by the Chairman and recorded in the county's Official Records. The Planning Director will be responsible for maintaining copies of all such resolutions in a single document which will be appropriately indexed and provided to all persons upon request. The document will be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

D. LEGAL EFFECT OF ANNOTATIONS.

Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the annotation will have the force of local law and all persons will be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of Section 163.3215, Florida Statutes. (Amended by Ordinance No. 00-22)

RESOLUTION NO. 2003- _ - _

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, WHICH ADOPTS AN INTERPRETATION OF THE COMPREHENSIVE PLAN.

WHEREAS, the Board of County Commissioners of Lee County, Florida, adopted a Comprehensive Plan known as "The Lee Plan" by Ordinance No. 89-02 which became effective on March 1, 1989; and

WHEREAS, the Lee Plan provides for procedures for legislative interpretations of the Lee Plan as set forth in Chapter XIII, Section (c); and

WHEREAS, a request for interpretation of the Lee Plan was considered by the Comprehensive Plan Annotations Committee; and

WHEREAS, the Committee recommended approval of the proposed interpretation set forth herein; and

WHEREAS, the Local Planning Agency reviewed the proposed interpretation and recommended approval; and

WHEREAS, the Board of County Commissioners has determined that the proposed interpretation of the Lee Plan is the correct interpretation to be applied to the affected provisions of the Lee Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

Given the provisions of Objective 17.1, public facilities, such as new schools, are not permitted in the Buckingham Rural Community Preserve future land use category without first obtaining a future land use map amendment to the Public Facilities future land use category.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion made by _____, and seconded by _____ and, upon being put to a vote, the result was as follows:

John Albion _____
Andrew Coy _____
Robert Janes _____
Ray Judah _____
Douglas St. Cerny _____

DONE AND ADOPTED THIS 18TH DAY OF NOVEMBER, 2003.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of The County Attorney