

COMPREHENSIVE PLAN ANNOTATIONS COMMITTEE RECOMMENDATION

The Comprehensive Plan Annotations Committee met in public sessions on February 2nd and 9th 2006 to consider an annotation of Policy 14.2.2. and Objective 14.2.

QUESTION:

Given the language of Lee Plan Objective 14.2 and Policies 14.2.1 and 14.2.2, is the current county staff interpretation and implementation of these provisions with regard to review and approval of development orders consistent with their intent and purpose.

MAJORITY ANSWER: Yes

LEE PLAN LANGUAGE:

OBJECTIVE 14.2: ROAD IMPROVEMENTS. The county will continually monitor traffic levels on Pine Island Road to insure that the sum of the current population plus development on previously approved land plus new development approvals will not exceed the capacity of existing and committed roadways between Pine Island and mainland Lee County. (Amended by Ordinance No. 00-22)

POLICY 14.2.1: The minimum acceptable level-of-service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is hereby established as LOS "D" on an annual average peak hour basis and LOS "E" on a peak season, peak hour basis. This standard will be measured at the county's permanent count station on Little Pine Island and using the methodology described in the 1985 Highway Capacity Manual, Special Report 209. (Amended by Ordinance No. 00-22)

POLICY 14.2.2: In order to recognize and give priority to the property rights previously granted by Lee County for about 6,675 additional dwelling units, the county will keep in force effective development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. These regulations will reduce certain types of approvals at established thresholds prior to the capacity of Pine Island Road being reached, measured as follows at the permanent count station on Little Pine Island at the western edge of Matlacha:

- When traffic on Pine Island Road reaches 810 peak hour, annual average two-way trips, the regulations will restrict further rezonings which would increase traffic on Pine Island Road through Matlacha. These regulations shall provide reasonable exceptions for minor rezonings on infill properties surrounded by development at similar intensities and those with inconsequential or positive effects on peak traffic flows through Matlacha, and may give preference to rezonings for small enterprises that promote the nature and heritage of Greater Pine Island.
- When traffic on Pine Island Road reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on

the further issuance of residential development orders (pursuant to chapter 10 of the Land Development Code), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. The effect of these restrictions on residential densities must not be more severe than restricting densities to one-third of the maximum density otherwise allowed on that property.

The 810 and 910 thresholds were based on 80% and 90% of level-of-service "D" capacity calculated using the 1965 Highway Capacity Manual, as documented in the 2001 Greater Pine Island Community Plan Update. These development regulations may provide exceptions for legitimate ongoing developments to protect previously approved densities for final phases that have a Chapter 177 plat or site-plan approval under Ordinance 86-36.

DISCUSSION:

When interpreting a statute or ordinance it is necessary to start with the plain meaning of the language. The plain meaning will control in any attempt to understand and apply the ordinance. (*Rollins v. Pizzarelli*, 761 So. 2d 294, Fla. 2000) Clearly, the subject language is not a model of clarity or simplicity since it has created much controversy which has led to the need for this annotation. However, it is possible to determine some clear direction and purpose in the language. In order to do this, it is necessary to understand some of the rules that govern the writing of comprehensive plans.

In the context of a comprehensive plan under Florida Statutes, Goals, Objectives and Policies have a specific purpose. Rule 9J-5 of the Florida Administrative Code specifies this purpose as follows:

"Goal" means the long-term end toward which programs or activities are ultimately directed.

"Objective" means a specific, measurable, intermediate end that is achievable and marks progress toward a goal.

"Policy" means the way in which programs and activities are conducted to achieve an identified goal.

Keeping in mind the above, it seems clear that the Objective and Policies recognize the limited opportunities for improvement or expansion of vehicular access to Pine Island and the existence of thousands of separate parcels or lots that are likely to be improved with houses in the future thereby creating the need for close monitoring of future development and creation of restrictions on future development in order not to overload the existing and foreseeable road capacity to handle future traffic impacts. To accomplish this, Policy 14.2.1 clearly sets a level-of-service standard for Pine Island Road that is more strict than the level-of-service standard adopted for other roads countywide; and, Policy 14.2.2 directs the county to adopt regulations designed to maintain this higher level of service. Policy 14.2.2 also provides guidance and limitations for the regulations that must be adopted to

implement this portion of the Plan. Thus, it is clear that the Plan language is not self implementing, but relies on the regulations to be adopted to carry out its purpose. Certainly this assumes that the regulations that are ultimately adopted will be consistent with the Plan.

Pursuant to the mandate of the Objective and Policies, the county did adopt Section 2-48 of the Land Development Code (LDC), on October 24, 1991 without negative comment, that reads as follows:

Sec. 2-48. Greater Pine Island concurrency.

Concurrency compliance for property located in Greater Pine Island, as identified on the future land use map, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this article. These policies require the following:

- (1) The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station on Little Pine Island.
- (2) When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak-hour annual average two-way trips, rezonings that increase traffic on Pine Island Road may not be granted. When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order.

Pursuant to this section of the LDC, the staff determined that when the county's concurrency management report showed that the traffic on Pine Island Road reached the specified 910 threshold, then all new residential development order applications anywhere in Greater Pine Island would have to demonstrate that they meet both the county's general concurrency requirements and an additional test for their impacts on Pine Island Road with regard to the stricter level-of-service standard specified in Policy 14.2.1.

For example: Normally, a project located along Stringfellow Boulevard would only have to meet the county-wide standard traffic concurrency test on Stringfellow Boulevard at the point where its traffic impacts that road. The "910 rule" as now implemented by the staff would test this project for traffic concurrency based on the county-wide standard at the same place on Stringfellow Boulevard **and also** on Pine Island Road at the point specified in Policy 14.2.1 (under the higher standard also specified in Policy 14.2.1.) If the

development fails either test then the development order will be denied.

It is important to note that the staff uses the same methodology as used countywide for both traffic concurrency tests, except for the use of the higher level-of-service standard as specified in the Plan. This is because staff determined that there is nothing in the Plan language that would mandate some different methodology, nor is there any specific direction in the language as to how such a methodology is to be applied. This methodology is described as follows:

Transportation concurrency analysis is performed on a project by project basis at time of local development order review in order to determine whether there is sufficient available capacity on the adjacent arterial or collector road network to accommodate new trips to be generated by the project at the time that the impact will occur. Development Services maintains an estimate of the “existing” peak hour, peak season, peak direction traffic volumes on each link of the arterial and collector road system that are reported on the Annual Traffic Count Report published by Lee County DOT. The link by link existing traffic volumes, the estimated volume for the current year, estimates of future volumes from approved development orders and building permits and the maximum Level of Service (LEVEL-OF-SERVICE) capacity volume for each link are accepted by the Board of County Commissioners in the Annual Concurrency Management Inventory and Projection Report. Once this report is accepted, the reported volumes and capacities become regulatory tools in Concurrency evaluations performed for new projects.

Applicants for development order approval are required to submit a Traffic Impact Statement (TIS) for review by County staff. The TIS provides an estimate of both the annual average daily and peak hour trips that the project will generate. The peak hour trips are calculated for both the a.m. and p.m. peak hours; are further identified as to whether they are entering trips or exiting trips and then distributed to the surrounding roadway network in order to assess potential impacts and to determine if improvements to the system are required to mitigate those impacts.

For purposes of concurrency evaluation, the 100th highest peak hour, peak season, peak direction trip volume is calculated and then added to the “existing” traffic volume for the first arterial or collector link to which the project is contributing trips as reported in the most recent Concurrency Report. If the sum of these volumes does not cause the mandated Level of Service (LEVEL-OF-SERVICE) capacity of the link to be exceeded, then a Certificate of Concurrency will be issued which is valid for a period of 3 years from date of issue.

If the sum of the volumes exceeds the LEVEL-OF-SERVICE standard for the link, then the Concurrency Certificate cannot be issued unless:

1. The roadway link had been declared “constrained”, operates at LEVEL-OF-SERVICE “F” and the volume to capacity ratio does not exceed 1.85, or
2. Improvements to the impacted roadway link are funded in either a Municipal, County, or State Capital Improvement Program (CIP) within the first three (3) years of the adopted CIP, or
3. The project’s development intensity (number of units or building square footage) is reduced such that the Level of Service standard is not exceeded.

The principal arguments that have been made against the use of the county-wide

methodology are that the Plan language, especially in Objective 14.2, requires that the county reserve capacity on Pine Island Road for the future use of the existing 6,675 vacant lots or parcels that could be built upon; and that the Plan language requires the staff to deviate from the standard methodology by using the technique of cumulative counting of the trips from pending or approved development orders (which also functions as a reservation of capacity) so that the level-of-service standard for Pine Island Road (currently 1,130 trips) will not be exceeded by even one trip. There are several problems with these arguments.

First: Neither the Plan language, nor the LDC language contain any reference to a requirement to reserve road capacity for future units that may or may not ever be constructed. The county has intentionally rejected the capacity reservation/cumulative counting concept in its traffic concurrency system. Our experience has shown that many projects are speculative and either never get built, or are not developed as originally approved (typically with fewer units). Reserving capacity for such speculative projects would penalize legitimate and perhaps needed projects that are ready to be constructed by keeping them from being built or unfairly rewarding speculative developers by giving them an opportunity to sell their development rights at exorbitant prices to developers who are ready to build.

Second: If the language is interpreted to require a reservation of capacity for existing or approved vacant parcels, this would have resulted in an immediate moratorium on all development in Greater Pine Island in 1988 at the time the Plan language was adopted. This result is not supported by the language of the Plan nor by the record from the adoption hearing in 1988. The language in the Plan establishes thresholds for gradual restriction of development and a higher level-of-service standard for traffic concurrency. The staff has implemented this language in a manner consistent with the Plan.

Third: Even if the currently used non-cumulative methodology does result in a potential for exceeding 1,130 trips on Pine Island Road, the actual number of additional trips will be very low to negligible compared to the approximately 3,290 trips that would be added by the 6,675 vacant existing parcels. Concurrency, as required by Florida law and implemented in the Lee Plan, does recognize that there are certain pre-existing rights that cannot be denied even if a particular level-of-service standard may be exceeded if these rights are exercised. There is no practical way, short of widespread moratoriums, to avoid this situation. Neither State law nor the Lee Plan contemplate stopping all development in order to provide some type of preference for these pre-existing rights that may or may not be exercised.

In summary, Policy 14.2.2, in the context of Objective 14.2 and the rest of the Plan, does establish a higher standard of traffic concurrency for Greater Pine Island as well as gradual thresholds for applying this standard. The County Commission has adopted appropriate regulations in the LDC to implement the Policy and county staff have been and are properly enforcing these regulations.

ATTACHMENTS:

Minority Report

David Loveland Handouts from 2/2/06 and 2/9/06

Management & Planning Committee 8/2/04 Agenda Form with attachments

Paul O'Connor Memo 2/1/06 to Annotations Committee

Paul O'Connor Handouts from 2/9/06

Paul O'Connor Memo 10/31/04 to Board of County Commissioners

Re: Implementation of the 810/910 Rule

Timothy Jones Memo 7/30/04 to Board of County Commissioners

Re: Pine Island Concurrency

Peter J. Eckenrode Handouts and Memo 2/2/06 to David Owen Re: Transportation
Concurrency Review

David Depew Handout 2/9/06

Power Point Slides copies of presentation by the Greater Pine Island Civic
Association, Inc. Entitled: The Pine Island Land Plan, Objective 14.2 and the
810/910 Rules

Copies of Letters and Emails from interested persons

Transcript of 10/7/1988 Board of County Commissioners Public Hearing