

PINE ISLAND ANNOTATION

Question: *Does the current staff interpretation and implementation of Policy 14.2.2, specifically the “910” provision, comply with the legislative intent of Goal 14, Objective 14.2, and Policy 14.2.2?*

Minority Opinion: *The current staff implementation with some adjustments will comply with the goal, objective and policy referenced above. These adjustments include cumulative counting of residential development order traffic and restricting density to one-third the maximum allowable.*

Intent of “910 Rule”

Before answering the question about Policy 14.2.2, the intent of Goal 14 and Objective 14.2 must be examined. This has been an issue of concern for years. The Pine Island community, through the Civic Association, prepared one of the very first Community Plans in the county in the 1980s. One of the major issues at that time was hurricane evacuation and the limited road capacity serving Pine Island Road as it affected both daily travel and hurricane evacuation. Pine Island is accessed by a 2-lane arterial road over several two-lane bridges (one of which is a drawbridge) and a causeway. Goal 14 of the Lee Plan, states in part:

To manage future growth on and around Greater Pine Island so as to maintain the island’s unique natural resources and character and to insure that island residents and visitors have a reasonable opportunity to evacuate when a hurricane strike is imminent. (Emphasis added)

Measures to determine whether Goal 14 is being achieved were provided in Objective 14.2, which states:

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. (Emphasis added)

In practice, this monitoring has included all three components required by Objective 14.2: 1) continuous monitoring of traffic levels from the current population using a permanent traffic counter in Matlacha; 2) a reanalysis approximately 5 years ago of the amount of development on previously approved land that has yet to be built (6,675 vacant lots now, down from 6,800 in 1989), and 3) potential traffic from new development approvals, which is tabulated by staff on a regular basis. The distinction is that staff does not use the

cumulative totals of the traffic from new development approvals, as appears to be intended by this objective.

Policy 14.2.2 further mentions giving “priority to the property rights previously granted by Lee County for about 6,675 additional dwelling units”. To provide this priority, measures to gradually limit future development approvals are to be implemented that would reduce certain types of approvals at established thresholds prior to the capacity of Pine Island Road being reached. These measures are commonly known as the “810” and “910” rules. (The “810” rule is not the subject of this annotation and is only mentioned to illustrate that restrictions were contemplated by the County Commission to manage growth. The 810 rule is now in place and enforced.)

The “910” rule of Policy 14.2.2 states:

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.

When these provisions are interpreted as a whole, the intent is to restrict residential development orders once the 910 traffic volume threshold has been reached, in an attempt to “leave room” for future traffic from the 6,675 vacant lots that will be built over time. The wording of the policy does not say that the county must *stop* issuing development orders (despite that being the general understanding for 17 years), but it does say that restrictions are to be imposed “until (road) improvements can be made” and that the restrictions cannot be more severe than reducing density to one-third the maximum density otherwise allowed.

Through the settlement agreement with the state, DCA required that specific numbers (810 and 910) be put into the plan in place of the originally proposed formula. The plain language in the goal, objectives and policies never references the number “1130” (the number supported by the majority opinion), it only references “910”. Deriving “1130” requires one to interpret the 10 word phrase in Policy 14.2.2 “or other measures to maintain the adopted level of service” as superior to the other phrases in the paragraph. Additionally, if one were to interpret the phrase as superior, one would still need to go back to a prior page, to interpret Policy 14.2.1 as meaning LOS D/E, and then perform traffic calculations not contained anywhere in the Plan, to arrive at the “1130” number. The use of “1130” is not supported by a complete reading of the plan, nor by its legislative intent.

Current Implementation of the “910 Rule”

Some adjustments to current practices are needed to properly review future residential development orders in light of the wording and legislative intent of the Lee Plan.

The current procedure countywide is to analyze traffic impacts created by each proposed development separately when reviewing the site plan (development order), as if no other pending projects exist. The question here is whether the County Commission intended for Pine Island to be treated differently, and whether residential development orders should be considered separately, or cumulatively as suggested by Objective 14.2.

It is the minority opinion that the traffic impacts of projects should be counted cumulatively now that the 910 level has been reached. To do otherwise is not logical in a situation where roads cannot be widened as growth occurs. For example, assume that Pine Island Road can accommodate 200 more trips before the capacity is reached. Under the current system, one development that generates 201 trips would be denied, yet 5 separate projects each generating 199 trips (for a total of 995 trips) would all be approved. This method is not supported by the Plan wording and cannot be attributed to legislative intent.

Under the current system, building permits for the vacant platted lots will continue to be issued, even when the Level of Service on Pine Island Road reaches LOS F. With no restrictions on building permits for these vacant lots, no plans to build a new bridge to Pine Island, and no substantive reduction of residential development orders, the Plan policies would essentially be meaningless.

A new sentence limiting the restrictions to one-third the maximum allowable density was adopted by the County Commission in January 2003 and became effective on December 24, 2004. The minority opinion is that this one-third restriction is self-implementing.

Final Note

If the minority opinion is accepted, the County Commission may wish to decide whether to give special consideration to pending development order applications that are complete but are being held in abeyance pending the outcome of this annotation process, in the interest of fairness.