

**MINUTES
LAKE COUNTY
LOCAL PLANNING AGENCY**

JANUARY 6, 2006

The Lake County Local Planning Agency met on FRIDAY, JANUARY 6, 2006 at 9:00 a.m. in Room 233 on the second floor of the Round Administration Building in Tavares, Florida. The Lake County Local Planning Agency considers comprehensive planning issues including amendments to Lake County's Comprehensive Plan.

Members Present:

Ann Dupee	District 2
Michael F. Carey	District 3
Richard Dunkel	District 4
Nadine Foley, Vice-Chairman	District 5
Sean Parks	At-Large Representative
Keith Schue, Secretary	At-Large Representative
Barbara Newman, Chairman	At-Large Representative

Members Absent:

David Jordan	District 1
Becky Elswick	School Board Representative

Staff Present:

Kevin McDonald, Assistant County Attorney
Amye King, AICP, Deputy Director, Growth Management Department
Thomas Wheeler, Planner, Comprehensive Planning Division
Donna Bohrer, Office Associate III, Planning & Development Services Division

Barbara Newman, Chairman, called the meeting to order at 9:00 a.m. and noted that a quorum was present. She confirmed that Proof of Publication was on file in the Comprehensive Planning Division and that the meeting had been noticed pursuant to the Sunshine Statute.

Philip Gornicki said he represented the Florida Forestry Association. He explained it was a trade organization representing the forestry industry. He is involved in the development of policies and regulations that impact forestry practices.

Mr. Gornicki referred to the Policy titled Protection of Wetlands and Wetlands Systems in the Future Land Use Element (FLUE). He said the criteria required for the Notice of Intent (NOI) for timber harvesting in wetlands was similar to a permitting process. He explained it required documentation of the suitability of the lumber for harvest, a harvesting schedule and the application of Best Management Practices (BMPs) for forestry. Mr. Gornicki was concerned that too many regulations and duplication of regulations could increase costs and discourage forestry possibly leading to the loss of that industry and the green space it provides.

Keith Schue said this policy had not changed since 1990 and added he would like more time to review this policy. Mr. Gornicki said that forestry BMPs have expanded since 1990 and now apply to more than water quality. Mr. Schue asked if BMPs have the “force of law”. Mr. Gornicki said the BMPs have been adopted as part of the Department of Agriculture rules and they are cited in the Florida Administrative Code (FAC).

Mr. Schue explained that the LPA had agreed not to change the Wekiva policies.

Sean Parks said he would like time to review this and he agreed the County process outlined by Mr. Gornicki was very similar to a permitting process.

Nadine Foley thought it was general practice for everyone to follow the BMPs. She said she would like more time to review this policy because it referenced cypress trees and it is in the Wekiva River area. She thought Lake County had done a good job protecting the Wekiva area and retaining some of those policies would have merit.

In response to a question from Richard Dunkel regarding view shed protection, Mr. Gornicki said the buffer zones in their BMPs are designed to protect wildlife and water quality. They encourage view shed protection but it is not mandatory.

Ms. King said Mr. Gornicki would receive notice when this policy was reviewed.

Ms. King said comments should be ready for the consultants on the Public Facilities sub-elements by January 14, 2006. She said a comparison of the EAR to the updated Comprehensive Plan should be available in February.

Michael Carey and Mr. Schue discussed the definitions of protected recharge (10”) and in the Wekiva Area, “most effective recharge” (10” or type A soils) in the Aquifer Recharge Sub-Element. Mr. Schue didn’t think development or density in those areas had been discussed.

Future Land Use Element

During a brief update on Future Land Use Element (FLUE), Ms. King said consensus had been reached to define densities by using “up to” in the definition. She said there was debate among planners about using “up to” in density definitions or should densities be a “range”. She added that some planners consider the “range” definition to be a tool to prevent sprawl. She explained that the range of densities allows urban densities to be focused in certain areas, and lower densities are not allowed. She said lower density development could create a rural area that higher density development would have to “leapfrog over”. That “leapfrog” situation contributes to less efficient central utilities and public safety.

Ms. Foley commented that in order to avoid the “leap frog effect” the higher densities have to be kept close to the municipalities.

Mr. Schue was concerned about property rights and he asked if a landowner could be forced into compliance with a minimum density. He asked how could a landowner be penalized for having less density. Ms. King said the debate was focused on the importance of keeping urbanized densities close to urban areas instead of focusing on any single property owner’s right to have lower densities. Mr. Schue said if the density range was adopted then many landowners would be immediately noncompliant because their density is too low. He did not see how a minimum density could be put on property.

Richard Dunkel was concerned with the Joint Planning Areas (JPAs) and how those differences could be rectified. He believed that the less ambiguity the better and said it is important to have predictability in the Comprehensive Plan.

Ms. Foley thought minimum densities wouldn’t apply to existing landowners but would take effect when the property is developed.

Ms. King suggested this issue could be reviewed during the Evaluation and Appraisal Report (EAR) review.

Mr. Carey thought having a range of densities available contributed to developments that compliment each other. He said he favored the “up to” densities.

Ann Dupee thought a variety of densities and lifestyles was best.

Mr. Parks said he could see both sides of this issue. He thought having a specific lower range gives more predictability.

PUBLIC COMMENT

Rob Kelly discussed some legal decisions on the State level and he offered to provide more information if requested.

Mr. Dunkel asked how it would work if all developments were negotiated similar to Planned Unit Developments (PUDs).

Ms. King said when Department of Community Affairs (DCA) looks at a Future Land Use Map (FLUM) they only consider the maximum build out in their analysis.

There was a consensus by the LPA to retain the “up to” definition of densities.

Ms. King said the consultants had been notified of the change from Rural Village to Historic Village, which is defined as existing historic areas that may or may not be a Census Designation Area (CDA). The Historic Villages will also be self-designated.

Mr. Schue asked if Historic Villages would be a Future Land Use designation and asked if the density of two units per acre would apply. He thought it was important to understand what is meant by “existing historic areas”. He asked if it would be possible to define these planning areas and if the County’s existing land use categories would be used. Ms. King said these communities would like to be uniquely treated and to be identified in the Comprehensive Plan. Mr. Schue thought it should be a community-based planning activity. He said County staff and the community would have to decide on the distribution of FLU densities. He thought a planning district overlay would be the best option for these areas. Ms. King was concerned that if the Rural Village and the Historic Village land use designations were not included in the new Comprehensive Plan it would appear that the County was ignoring what they had been asked us to do. She said she understood that using the same densities in each case would not work. Ms. King asked if the LPA would prefer Historic Village be a policy but not a land use. Mr. Schue thought that could be done.

Ms. Foley thought the restrictions placed on businesses in these villages could be stifling their revitalization and perhaps some of those restrictions could be removed. She said she strongly supported the efforts of those citizens who were actively involved in those community-planning efforts.

Ms. King suggested that instead of a zoning cap on Historic Villages they should be “developed to scale” not according to the use. She said scale would have a LDR definition. Mr. Schue thought there would have to be an overlay with assigned densities. Mr. Parks liked the idea of special area plans but he was concerned that it would be a difficult project for staff. Ms. King said it could be costly in terms of staff time. However, she added that the County has many “citizen planners” and that diminishes the amount of staff involvement. She said an overlay might be more appropriate than trying to determine densities for each Historic Village. Policies can be written to specifically address Historic Villages but it would not be a land use designation. She asked if the LPA would object to having these areas identified by their boundaries without actually designating them as Historic Villages. Mr. Schue suggested designating them as “Special Planning Areas”.

Rob Kelly suggested calling them “Historic Village Planning Areas”.

Ms. King said Mr. Schue was right when he said if Historic Villages were included in the FLUE as a future land use category then they must have a density assigned to them.

Mr. Dunkel asked if this policy could be tied to science and he referenced specific software that had been discussed at an earlier meeting. Ms. King said the software was Community Viz and she said it would be available to the LPA.

Mr. Parks asked about the feasibility of having a higher density category in the Urban Map Series. Ms. King said the maximum at this time is 12 units per acre. Mr. Schue thought the highest densities should be located in the cities. Mr. Parks agreed but thought there were certain areas in the county where that density might be appropriate such as around major roadways. There was discussion about affordable housing and that most of those areas were probably located in a JPA. Ms. King said a category could be created in the future to provide a higher density option where appropriate. There was discussion that a land use designation could be created without putting it on the FLUM. Ms. Foley thought that 22 units per acre should only be allowed in the incorporated areas. Mr. Schue thought it would only be appropriate in an enclave inside of an urban area, so it would be infill. Ms. King said the highest densities requested by the cities in their JPAs was 12 units per acre.

Chairman Newman asked the LPA to raise their hands if they would support the addition of the higher density category. The result was one in favor and six opposed.

PUBLIC COMMENT

Richard Gonzales, Pineloch Management Corporation, said changes in transportation and energy costs are going to make higher densities an economic reality. He thought that the big home on a large lot was going to be a thing of the past. He questioned the lack of areas designated for industry and business in the Comprehensive Plan.

Ms. Foley said the LPA's responsibility is to plan only for the unincorporated areas of the County.

Mr. Parks agreed that higher densities should be encouraged in appropriate places and in urban areas. He commented that higher densities require central utilities, which are not provided by the County.

Rob Kelly referred to the Penn Study presented to the LPA at an earlier date.

There was a five-minute break.

David Jordan arrived.

Ms. King said before they began discussion of the next objective in the FLUE, she wanted to review their earlier agreements. She said it was her understanding that the LPA

preferred High Intensity Development District, Traditional Neighborhood Development and Mixed Use Development instead of the different Activity Centers. In reference to Mr. Parks' earlier suggestion, Ms. King said perhaps provisions could be added to those land uses because they include plans for commerce and industry, and scale of development. She said revised language would be brought back for their review.

In response to Ms. Dupee's comment regarding Public Safety, Ms. King said those agencies are working closer together than ever before.

Mr. Schue suggested using both office and employment center land use categories. Ms. King read the permitted uses and said it quite all-inclusive. She thought the LPA had requested that they be separate. The Chairman confirmed that an earlier decision had been made to separate office and professional uses.

Mr. Schue thought it would be important to define "the mix" of residential and other uses in Traditional Neighborhood Design and Mixed Use land uses, plus the Open Space requirements. Ms. King concurred with Mr. Schue's suggestion to use ratios. He suggested modeling those uses on PUDs. Mr. Dunkel asked if that was a LDR question. Ms. King said the current plan and LDRs are inconsistent and putting those figures in the LDRs would avoid that problem. However, Open Space will have to be defined for the DCA. Mr. Schue thought Open Space was essential for quality developments. Ms. King pointed out that it was not required in straight zonings.

Mr. Parks thought it might be appropriate for specific PUD information for the different land use designations. Mr. Schue said minimum open space requirements are included in some comprehensive plans. Ms. King said flexibility was the main benefit of PUDs. She said the focus should be on where PUDs are required. The requirements for PUDs will be defined in the LDRs. She emphasized that PUDs could be discussed during the implementation of the Comprehensive Plan.

In response to a question from Ms. Dupee, Ms. King explained that the meetings currently being held on school concurrency would address many school issues. She added that at this point there is not a final agreement on school concurrency.

There were no comments on Objective 3, Protect Residential Neighborhoods.

During discussion on Objective 4, Mr. Parks said the LPA should do whatever could be done to protect agriculture and the citrus industry. Ms. Foley said solving those problems was outside the realm of this board. However, she said that there are opportunities in innovative agriculture. Ms. King said she would investigate policies to support those opportunities in innovative agriculture. Mr. Jordan thought enough acreage was available for Urban Uses and said there was an excess amount of residential land to accommodate the population projections of BEBR. He referred to the phrase "ensuring sufficient acreage is designated" and said the existing acreage designated for urban uses is already "ensured". He thought they should capitalize on existing urban areas and manage what land uses they have. Ms. King commented that many of the requests staff have received

from developers and cities are at lower densities than what is currently on the FLUM. Ms. King said staff is doing a “Burt Harris test” on zoning in the County. Mr. Jordan said “ensuring” could stay there because “you currently have it”. Ms. King said she could invite representatives from the agricultural community to address the LPA. The LPA agreed with Mr. Schue’s suggestion to reword Objective 4.0 “coordinate FLU with environmental characteristics”.

In Policy 4.1.4 Mr. Schue suggested adding a sentence including “other environmentally sensitive areas”.

There was discussion about a particular area of the county and how it has been affected by vested developments, how to protect agriculture interests and regulations on density. Mr. Schue spoke about the importance of finding balance in those situations and that sometimes using “infill” as a justification was an overstatement. Ms. King said the Existing Land Use Map (ELU) would help to make more informed decisions on land uses and densities.

Ms. King suggested discussing the Wekiva Policies at a later meeting. She said the original language would be retained with additions to reflect the mandatory requirements from the State. Mr. Schue said he had been focused on policy for the part of the Wekiva Study Area that is located outside the Wekiva River Protection Area. This is a significant area and it will require a planning effort. He wanted to define a transitional area and to protect the traditional rural communities. Mr. Schue referred to the roadway corridor overlay policy for SR 46 and said that overlays should be considered for other roadways too. He added that not all the overlays would need to be the same. This was discussed by Mr. Schue and T.J. Fish, Executive Director of the L/S Metropolitan Planning Organization (MPO).

During discussion on Green Swamp Area of Critical State Concern (GSACSC), it was decided to replace the legal description with a reference to it. In response to a question from Mr. Dunkel, Rob Kelly explained the recent legal decision and the history of that lawsuit regarding the City of Groveland and the Green Swamp. There was discussion on how to better protect the Green Swamp. Mr. Kelly thought the use of “minimum” in the Goal could be construed in such a manner to adversely affect that area. He referred to Goal 1-A that was not carried forward from the current Comprehensive Plan. There was a consensus to accept those comments and include the identified goal.

Mr. Jordan referred to the Policy titled Limitations of Development within the GSACSC and asked if the County wanted to take a stronger stand regarding annexations in the Green Swamp. Ms. King said there was an annual limit on the number of building permits in the Green Swamp and the County had not followed through on that. Mr. Jordan suggested, “take a role in negotiating with any attempted city annexation in the Green Swamp” to avoid density increases. Ms. King said staff could suggest something similar to “annexations within the Area of Critical State Concern will be reviewed and commented on by the County”. Mr. Jordan said “take an active role in the process to assure that development in the Green Swamp will be limited”. Kevin McDonald,

Assistant County Attorney, said that approval by the County is not necessary for annexation. Mr. Jordan remained concerned over this area. Chairman Newman asked if there was a consensus to include language that “in Areas of Critical State Concern the County would be involved in the annexation review”. Mr. McDonald said the County couldn’t contest an annexation; only a party suffering a material injury has standing. The County’s only recourse would be to appeal the subsequent Comprehensive Plan changes to the Department of Community Affairs (DCA). Mr. Jordan said his concern was about the degradation of the Green Swamp not necessarily the annexation of that land. Mr. Carey said there was not much that the County could do. Mr. Kelly said Clermont had included a requirement in their Comprehensive Plan that their Green Swamp policies would be consistent with the County’s. He added that Mascotte is considering doing the same. Ms. King suggested test stating that the “County shall appeal land use changes that have the potential to denigrate the environmental integrity of the Green Swamp”. Mr. Schue suggested including appropriate language in the applicable JPAs. He said that not all annexations are for urban densities and he thought the County could qualify as an “affected party”. Ms. Foley agreed and said she would like to see that language included in the appropriate JPAs. Ms. Schue thought the County should be working with the cities in both of the statutory identified areas, meaning the Green Swamp and the Wekiva Study Area. Mr. Carey suggested language be brought back at another meeting.

Ms. Foley and Mr. Parks left the meeting.

Mr. Dunkel thought the water issue was of paramount concern and it is an issue that affects the whole region. In response to a comment from Mr. Jordan, Mr. McDonald said once land is annexed the County may no longer be an “affected party” and therefore would have no standing. Ms. King said staff reviews all of the Comprehensive Plan amendments and rezonings from the adjacent counties and the cities in Lake County.

Ms. King said the Comprehensive Plan will only require timeliness in the Green Swamp. She explained there have been some problems relating to how “developed” is defined.

Ms. King asked how the LPA would like to have timeliness work. Mr. Schue asked how public lands were counted and said it didn’t make sense to approve development next to lands purchased for preservation because they are environmentally sensitive. There was discussion on how to apply this policy and the definition of development. Ms. King thought that only rooftops were counted as “developed” at this time. However, in the past, properties that were not available to be developed were counted.

Kathy Allison, paralegal, Akerman and Senterfitt, and Mr. Schue discussed the amount of land designated as Transitional in the Green Swamp and the application of timeliness.

Mr. Jordan commented that the Green Swamp was a very significant area for the region.

Ms. King said if timeliness was retained then it would be important to clearly define it.

Some LPA members said they would like time to review this issue and asked staff to

provide data on how much land was Transitional in the Green Swamp.

Mr. Kelly asked why not eliminate timeliness in the Green Swamp too. Ms. King said timeliness had been retained in the Green Swamp because the LPA had agreed not to change any of the GSACSC policies. She added that the DCA was comfortable with timeliness in the GSACSC.

Ms. Allison thought the intention behind the Transitional Land use category was to allow higher densities on the outer edges of that area. Mr. Kelly said removing timeliness would mean that landowners would not be able to increase density in the future.

Ms. King said timeliness could be discussed at the next meeting.

Ms. King explained some changes were made to correct Florida Administrative Code references.

In response to Mr. Schue's question, Ms. King explained that the reference to prohibiting public monies being used to build new roads had been modified because now developers are building roads. She thought the intent of the policy was that no new roads be built in the Green Swamp.

Ms. King said staff agreed with Mr. Schue's suggestion to restore Objective 1-18 and the policies previously included under Protection of Groundwater Resources and to restore Protection of Water Quality and Quantity. Mr. Schue and Ms. King discussed ensuring that the policies referred to in the GSACSC should be consistent with the elements referenced.

There was agreement with Mr. Schue's suggestion to allow no mitigation for wetlands or floodplains in the Green Swamp except to provide legal access.

Mr. Kelly asked if Policy 5.32 Prohibition of New Mines in the GSACSC was going to remain. There was a consensus not to change this policy.

There was a one-hour lunch break.

In reference to Objective 6.0, Reduce Nonconforming Uses and Antiquated Plats, Ms. King said the County Attorney had suggested adoption of the regulations in the current LDRs until there is more resolution in these situations. Ms. King said this was not a vesting issue in the general meaning of that term. In response to a question from Mr. Schue, Ms. King said these are nonconforming lots that must meet a complicated list of requirements before they can be built upon. She thought that these lots in the Green Swamp would have to aggregate up to the FLU category. Mr. Schue asked about Policy 6.1, and Ms. King said staff would look for equitable solutions applicable to each unique situation. Ms. King confirmed that these antiquated plats do not supercede the FLU and they do not constitute vesting. Mr. Schue said it would be important to make clear the difference between actual entitlements people have on their property and what they may

“think” they have.

Ms. King said only one comment had been received on Policy 7.1.2 which was to substitute “shall” for “may”. In response to Ms. Dupee’s comment “cities” was added to Policy 7.1 regarding coordination and public schools. She also suggested including “use” in paragraph 4 in Policy 7.1.3.

There was discussion about encouraging neighborhood schools. Mr. Carey was concerned about the concurrency discussions and if it was clear “about who was responsible for what”. Ms. King said everyone agreed that co-location and the joint use of facilities were good ideas. However, concerns regarding vandalism and liability remain to be worked out.

Ms. King said staff had no objections to Mr. Schue’s suggestions on the Overlay Districts Objective. In response to a question from Mr. Schue, Ms. King said policies for the special planning communities would be located in this Objective.

Ms. Dupee voiced concern about the Dark Skies Ordinance and the safety of school bus stops.

There was agreement with Mr. Schue’s suggestion that this section on Overlay Districts would be an appropriate place to include roadway overlays.

There were no substantial comments on Objective 9.0 Public Facilities.

Ms. King said staff had no objection to the comments on Objective 10 Intergovernmental Coordination.

In response to a comment from Ms. Dupee about locating elementary school in rural areas, Ms. King said resolution of school issues would be dependent on the final outcome of the school concurrency meetings.

Mr. Schue explained that he had suggested replacing the word “growth” with “consistent with the future land use”. Ms. King agreed that the edits were consistent with the LPA’s positions.

Mr. Carey thought this new Comprehensive Plan was going to be more difficult to understand than the current plan. Ms. King said an executive summary is being prepared by staff to address that issue.

Mr. Schue asked the meaning of “Central Service Area” in the last paragraph in 11.1.2. Ms King thought it would apply more to ‘180 districts’ than to JPAs. Mr. Schue thought that phrase should be replaced with reference to Urban Land use categories. He suggested a statement that the County does not plan for central services outside of the urban land use series.

In response to comments from Mr. Carey on clustering, Ms. King acknowledged that it is a divided philosophy. He said without available utilities it will not be possible to build clustered communities and without clustering development will be either suburban or rural, which will have an economic impact on schools and roads. Mr. Jordan said at first glance clustering seems to be just another way to get a higher density, he acknowledged that educating people on the benefits of clustering would not be an easy task. Mr. Carey related those concerns to policy in 11.1.2 regarding “rely primarily upon individual septic...”. Mr. Schue said perhaps utilities should be allowed for clustering in the higher density rural areas that are adjacent to urban areas where hook up to utilities is available. He added that enhanced septic systems could accommodate higher densities up to one unit per acre, but higher densities than that should have central utilities. Mr. Schue suggested replacing “outside the adopted central service areas” with “adopted urban land use series” plus “and high density rural adjacent to the urban land use series”. Or he suggested referring to the Public Facility Element.

PUBLIC COMMENT

Kathy Allison asked what would happen if a city requested rural (1:5) density in a JPA and a 180 District. Ms. King said that situation has come up. She added that in general if water is requested within a City’s 180 District then the city has a certain obligation to provide services.

In Objective 12 Affordable Housing, Mr. Schue asked about density bonuses and the alternative density option and how it correlated with the FLU categories. Ms. King said Alfredo Massa, Senior Planner, had revised this Objective and she would meet with him. Mr. Jordan said low income and very low income were to be defined. Mr. Schue asked about the twelve dwelling units per acre density and if densities could be increased for affordable housing. Ms. King said density points could be awarded for affordable housing. She said Mr. Massa would be present at the next meeting to address these questions. Mr. Schue asked how the density bonus would be applied. Ms. King said this was to be a catalyst for discussion. Mr. Carey said an increasing percentage of people are unable to afford homes and there is a concern about marketability. There were general comments that affordable housing was appropriate in urban densities, which are found in the cities. Mr. Schue suggested affordable housing would be appropriate in the urban land use series and any density bonus should be defined and included in the land use definition.

There was some discussion regarding eminent domain in relation to Objective 13. It was noted that the BCC had passed a resolution saying that eminent domain wouldn’t be used for economic development but only for public need. There was an agreement to strike the phrase “or apply any LDR”.

Mr. Schue asked about the reference to “quasi-judicial review” in Objective 14.0 and Ms. King thought the consultant had included it. There was a consensus to end the Objective after the single sentence paragraph titled “Coordination”.

In Policy 14.1, Mr. Schue was concerned that the paragraph regarding areas affected by special law, which began with “Any application”, could be used to circumvent local authority. There was discussion on this issue including comments from Mr. Kelly. Mr. Schue said seeking an opinion was one thing, however pre-approval was another. There was a consensus to remove that paragraph.

The LPA agreed to remove the paragraph that follows beginning with “Proposed amendments”.

Ms. King said staff had no objection to the change in the next paragraph to require a traffic study.

Staff had no objection to the additional language suggested to Policy 14.1.3.

The next suggested change was to strike the second sentence in the first paragraph Policy 14.1.5. Ms. Allison asked if this applied to a Land Use Plan Amendment not just an amendment to a PUD. Ms. King agreed this was poorly worded. There was a consensus to accept Mr. Schue’s deletion and to reword the sentence.

After Mr. Schue commented on the title of Policy 14.1.6, Ms. King suggested “Urban Boundary”. Ms. King said if analysis showed there was no urban/rural boundary then this phase would be removed. Mr. Schue suggested “Any expansion to the County’s Urban Series” be used in place of the first phrase. Ms. King said staff had no objection to Mr. Schue’s other comments.

PUBLIC COMMENT

Rob Kelly said on behalf of several citizen organizations he was requesting time be allotted for a presentation on rural areas. Chairman Newman asked Mr. Kelly to contact staff to schedule the presentation.

In response to comments from Dawn McDonald, Lake County Schools, Ms. King said it is not feasible to finalize policies until the working group on school concurrency reaches agreement. When an interlocal agreement is reached it will be incorporated into the Comprehensive Plan.

There was general discussion on school issues and 180 utility districts.

The Chair adjourned the meeting at 3:50 p.m.

Donna R. Bohrer
Office Associate III

Keith Schue
Secretary

