

CAPE HAZE PROPERTY OWNERS ASSOCIATION
P.O. Box 690
Cape Haze, Florida 33946

January 26, 2007

Mr. Ray Eubanks, Community Program Administrator
Florida Department of Community Affairs
Bureau of Local Planning-Plan Processing Team
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Re: EAR Comprehensive Plan Amendments, Charlotte County 07-1ER

Dear Sirs:

I am President of the Cape Haze Property Owners Association (CHPOA) and am writing on its behalf as well on behalf of myself and my wife. Both CHPOA and myself and my wife as individuals, are affected persons under 163.3184 (1) (a) F.S. CHPOA is a voluntary association of approximately 140 homeowners living in Cape Haze in West Charlotte County, within the boundaries of the Charlotte County local government, and is a Florida Not-For-Profit Corporation. CHPOA has taken an active interest in development issues in our area and has been concerned about the EAR Comprehensive Plan amendments recently submitted to your office by the County. My wife and I live at 15 Spyglass Alley in Cape Haze in Charlotte County. Both CHPOA and my wife and I as individuals submitted oral and written comments to the local government at the transmittal hearing for the plan amendment.

Because we live in or in areas near the Coastal High Hazard Area and because we must rely on CR 775 (Placida Road), we and our neighbors are very troubled by the density provisions, including provisions for Transfer of Density Units, and traffic and transportation provisions of the amendments transmitted to you. Additionally, we note that the County procedures for public participation in the amendment process have been seriously flawed and appear to be noncompliant. We ask that you review the County's submission with regard to these issues and find that the County submission is inconsistent with 163.3177 F.S., 163.3178 F.S., 163.3180 F.S., and 9J-5 Florida Adm. Code.

Policy 1.4.5 re Density and Transfer of Density Units

The County's proposed amendments comprised over 1,700 pages. While purportedly available on line, until the very end of the process there was no easy reference point by which a public searcher could locate them (we needed two phone calls to the county for help in getting the correct reference). The amendments as initially published on the website included language which we

understand was supplied by the Department of Community Affairs (DCA) clarifying the language of the Comprehensive Plan regarding transfer of density units and specifying that such transfer could only be made “out of” the Coastal High Hazard Area. See Updates from the November 13, 2006 Meeting in the transmittal package. This was also the recommendation to the Commission from staff. In other words the CHHA could only be a sending zone. This DCA position is entirely consistent with the rest of the Comprehensive Plan and with the County’s own Transfer of Density Units ordinance.

At the County Board’s directions, amendments were discussed and negotiated in land development “practitioner’s workshops” with developers and their attorneys. See Exhibit 6 and discussion below. It was apparently a summary of the provisions negotiated at these workshops, which was then handed out to the County Commissioners, but not to the public. We attended the County Board discussion on November 21, 2006, where we found the Board and staff and practitioners discussing a handout re the transfer of density units policy which was not available to the public and was not explained. We obtained a copy after the meeting and it is attached as Exhibit A. Without the handout it was impossible to participate, let alone follow the discussion.

As the handout explains, the County was discussing the DCA request that the transfer of density units policy be made more specific in order to ensure that density units would NOT be transferred into the Coastal High Hazard Area (Tropical Storm and Category 1 Hurricane Storm Surge Zones). Practitioner commenters were opposed to such a change. The handout contained certain alternative and less specific language, and the Board agreed with practitioners and refused to approve the DCA request at the November 21 meeting where it was addressed.

At the final meeting on December 19, 2006 several organizations and members of the public, including CHPOA and the Gasparilla Island Conservation and Improvement Association (GICIA), asked that the Board affirm the commitment of the Plan to bar transfer of density to the CHHA. These written comments are attached as Exhibit 2. Despite these requests the Board refused to make the changes requested by DCA, endorsed by staff, and urged by the public, that the Plan specifically bar transfer of density to the CHHA. This refusal was despite what we believe are the clear directions in the Plan, in your regulations, and in the statutes, that density at the coasts be reduced, not increased, for reasons of hurricane evacuation and safety, infrastructure risk and possible destruction, environmental protection and even insurance availability. Examples of these directions include, but are no means limited to, the following: 9J-5.012 (3)(a)(Goals, objectives and policies (GOPs) shall reflect legislative intent that government restrict development that would damage or destroy coastal resources, and protect human life and limit public expenditures in areas subject to destruction by natural disasters, including directing population away from such areas); 9J-5.005(5)(elements to be internally consistent with each other); 9J-

5.005(6)(GOPs to provide meaningful guidelines for more detailed regulations); 9J-5.006(3)(b)5(coordination of coastal planning re densities with hurricane evacuation plan);9J-5.006(3)(b)8 and (5) (discouraging urban sprawl and addressing use of TDUs); 9J-5.012(2)(consideration of protection of areas subject to flooding, wetlands, estuarine resources and consideration of hurricane safety and impact of population density and infrastructure risk). Charlotte County's own plan has similar goals, see e.g. 1-x, 1-83-84(hurricane safety and limit of infrastructure), 1-142 (removal of density from the CHHA), and the entire Coastal Planning element which is directed at limiting density in the CHHA. There is no reason the TDU provisions of the Plan should not specifically bar transfer of density to the coastal areas. The DCA language should have been accepted. (We note by the way, that the Coastal Planning Element was missing from the disk supplied to us, but we assume it has been submitted to DCA)

Unfortunately, there seems to be serious confusion at the County Board as to their TDU requirements. At the County Board meeting January 16, 2007, the Commissioners applied the ordinance to award transferable units to one applicant but not to another, in a situation where confusion as to the TDU process was noted and where staff offered to provide the commissioners a "workshop" on how the ordinance is supposed to work. (See Exhibit 3).

The crucial, and practical, importance of the TDU issue was illustrated by another matter taken up at the same meeting at which the Board finally approved the Comprehensive Plan Amendments for transmittal. In the past the Board, in response to substantial public opposition, had refused to approve a large scale plan amendment to allow residential development of the Wildflower Golf Course on Placida Road in an area partially located in the CHHA. That plan would have required the transfer hundreds of density units as the Golf Course has no density assigned to it. Developers had sought to transfer density from an inland area to the Golf Course and were turned down. Despite this, without notice the Board added an additional item to its agenda on December 18 for the December 19 meeting. That agenda item was not identified as pertaining to Wildflower (in fact it was not identified in any useful way-see Exhibit 4), but when it was taken up it turned out to be an approval of a Developers Agreement to give the Wildflower developer the density it had already been denied twice (some 400 units). When the consultant for certain Wildflower opponents tried to speak in opposition (he was present because of the Comprehensive Plan discussion) he was ruled out of order as no public input was allowed. The Board then approved the developer's agreement by a vote of 4 to 1, Commissioner Cummings pointing out in dissent the difficulty of donating density to a parcel that had no density by a developer's agreement without either a comprehensive plan amendment or a zoning review. The Developers Agreement was also opposed by the County staff and apparently by the County attorney who indicated at the Commission meeting that its office had not had sufficient time to review the Agreement, and that it was unusual to have such an agreement absent the Comprehensive Plan

Amendment. See Exhibit 4 which is the package of the flawed notice, the Developers Agreement and the County staff comments.

Newspaper articles have pointed out the very troublesome nature of this action which was done without public notice or input and constituted an end run around the Comprehensive Plan and the development review process. The result, according to the calculations of a *Herald-Tribune* columnist, is an award of some \$8,000,000.00 to the developer based on the assumption that the going rate for density units is \$20,000. In fact the Plan Amendments suggest it is closer to \$30,000. A selection of articles concerning this issue is contained in Exhibit 5.

As noted above, the whole thrust of the Plan, your regulations and the statute is to reduce density near the Coast. Beyond that, the County has adopted a policy of no density increase and implemented it with the TDU ordinance. Despite this, Commissioner Cummings noted at the January 16, 2007 meeting, that, despite the Comprehensive Plan pledge to reduce platted units by 1% per year, in fact County staff had reported to him that platted units had increased by 3403 since 2000, a deficit of 13,413 units from the promised reduction. In this regard note as well a “typo” in which the County dropped its pledge to reduce platted lots by 1% per year through 2020, substituting a pledge to reduce platted lots by 1% total by 2020. This was pointed out to the Commission by the GICIA. While the County states this is a typo, it illustrates the problem when the County’s intentions are not clearly stated. See GICIA comments in Exhibit 2.

All of these circumstances, as well as the Plan itself and the statutory structure, illustrate the necessity of a Comprehensive Plan which insures that any density transfer is away from, not into, the Coastal High Hazard Area.

As the DCA is well aware, density in coastal areas affects safety, hurricane evacuation, environmental resources, infrastructure cost and risk, and, as we are learning, insurance rates. It is inconsistent with the Plan itself as well as your regulations and the applicable law, to ignore the coastal density protection requirements in the Comprehensive Plan. We ask that the DCA require that the Charlotte plan affirm that density may not be transferred to the Coastal High Hazard Area and that the County be required to abide by that requirement of the Plan and its own ordinances. We believe that the DCA language is a very appropriate mechanism for this purpose.

Transportation

The current traffic level of service (LOS) in Charlotte County is C. The Executive Summary to the Plan, as well as the Introduction to the Transportation element, indicated no major changes. In fact, the Executive Summary provided to the public stated that the Transportation element of the plan “provides an impetus for the County to consider” a change from C to D, clearly indicating that no current change was being made. Throughout the Transportation element there is no

basis discussed for any broad change in LOS. See 2-35, D-5-7, Map 2.2. See also 1-163. Despite this suggestion that, at the most, a change might be considered in the future, and the fact that no serious problems are noted in most of the County, the plan as submitted to DCA changes the LOS to D, essentially throughout the County. See Policy 8.1.1. Absolutely no analysis or reasoning was provided to justify or even explain this significant change, and, as noted, the Executive Summary provided as noted to the public indicated that any change would take place in the future. Thus, there was neither notice nor public input on this change of significant countywide impact. (The “urban service area” covered includes most of the County except rural areas.)

The broad change of LOS from C to D thus appears inconsistent with 9J-5.005(2)(a)(requiring that provisions be based on relevant and appropriate data) and 9J-5.005(3)(requiring that LOS standards be applied to individual facilities or facility types, not on a system wide basis).

When some individuals and organizations appeared at the Final Hearing to protest the change there was doubt expressed by the Commissioners as to the need for a LOS change and promises that maybe this could be reconsidered later after receiving public input. We appreciate this willingness to listen to the public and ask that this change be rejected until there has been public input. There is an understanding that the intersection of US 41 and SR 776 in Murdock is a problem, and can't be fixed, and probably needs to be changed to D, see 2-49, D-5, but the idea that that should happen for the County as a whole requires public discussion, which has not been provided. A premature change to D will relieve the obligation on developers to mitigate the traffic burdens imposed by their projects and the obligation on the County to address fixable traffic problems.

Many of the objectors from CHPOA and GICIA, for example, noted the failure to date to address the congestion on the two lane portion of Placida Road south of Rotonda Boulevard. This is more than an annoyance. This is the evacuation route for the Cape Haze peninsula, Boca Grande and the barrier islands. See e.g. the many Plan references to the fact that the Cape Haze peninsula is isolated with difficult evacuation problems. Policy 10.1.1, 2-45-47. The Plan indicates that Placida Road in this area may be widened by 2030 as development takes place. BUT THAT IS JUST THE PROBLEM. DEVELOPMENT IS ALREADY TAKING PLACE. See Figure 1.8, the map of permit activity. And it is not just low intensity development as suggested elsewhere. 1-14. The storm surge map at 2.3 shows the 2 lane portion of Placida Road which serves our area going right through the storm surge area, and right through the new developments suggested by map 1.8 (Other information indicates over 1000 new units in this area). The Plan clearly states that the Cape Haze area is isolated and vulnerable with limited evacuation possibilities, yet the LOS redesignation and the increasing population density will severely exacerbate the situation. Additional lanes, turn lanes, a stop light at Cape Haze Drive and other measures are clearly needed. Policy 1.3.2 states

that a higher LOS may be needed to protect health and safety. Placida Road is just one example of a situation where public input was needed and where a system wide change in LOS is not appropriate. Undoubtedly there are others.

As suggested above, although the portion of the Cape Haze area in question is designated Suburban service area for the most part, much development has been approved in the area. In the past we have questioned the County about its traffic, evacuation, sewer and water planning for such development. We have frequently asked for any record of cumulative approvals, to be sure that concurrency management is being applied. We have received no reply. We note that the three major West County sewage treatment plants (Rotonda, Englewood Water District and Sandalhaven) are all clustered in this general vicinity, in areas subject to possible hurricane impacts. We further note that the Plan Amendments do not include the list of sewage treatment plant capacities and usages required by your rules. 9J-.011(1)(a). See 10165, A-286. We fear that development is being approved without considering these issues because data is not being kept despite the clear requirement to do so, See 9J-5.005(7), 9J-5.0055, 9J-5.016. In the case of the Traffic element, as it applies to LOS changes and hurricane evacuation this failure can have very serious consequences.

It is not appropriate to simply change the LOS to D and pretend the problem is now solved. A professional planner testified that traffic level of service standards can make the biggest difference in the livability and attractiveness of an area. They become even more crucial when public safety is at stake. They should not be changed without notice and public discussion.

The Failure to Provide for Public Participation

Public participation requires not only that a hearing be held, but that the public have notice of what is to be discussed at the hearing so that they can participate. The process used by Charlotte County in this case did not provide notice of the provisions being discussed and made it impossible for the public to participate.

As you are aware, the amendments provided to you exceed 1,700 pages. We understand they were made available on the County's website, though it took us two phone calls to the County to be directed to the correct location (they later were moved to a more prominent position). In the two subject areas discussed above, however, the issues being considered by the County were not described in the amendments themselves.

The debate over the transfer of density units provision was summarized in a written submission handed out to the Commissioners on November 21, 2006 at the first hearing. Exhibit A. It was not made available to the public until after this hearing, when we asked for a copy. Until that time the only notice to the public was the proposed amendment package itself which contained suggested

language from your agency specifying that the transfer of density could only be made from the Coastal High Hazard Area to a less vulnerable area. Accordingly there was no way for the public to know that in fact the Commission was considering language which would not follow the DCA recommendation. Because this handout was not made available to the public until after the hearing, the discussion of this issue had already taken place, and been the subject of the Commissioners vote, all before the time we were able to obtain a copy. (When we tried to raise the issue, as did others, at the follow-up hearing on December 19, 2006, it was made clear that the Commission would not reopen the issue). For the reasons discussed above the failure to include the public in this very important discussion is substantively, as well as procedurally, improper

As for the Transportation issue discussed above – the change in level of service standards – the executive summary for the amendments distributed on the County website indicated that no significant change was being made to any aspect of the Transportation element. Indeed, as to the change of level of service, it stated instead that such a change could be considered in the future. When the public became aware that a change was being made, and commented at the last December 19 hearing, several commissioners expressed doubts that they did in fact want to change level of service throughout the County. The Commission asked whether the level of service could be changed selectively or whether exceptions might be made to the change. Commissioners were reassured that they could fix this issue after the amendments were returned by DCA. While we appreciate the willingness of the County to reconsider this issue, the fact remains that the problem occurred because the publicly noticed amendments did not highlight this very important provision, making effective public comment impossible.

It is important to note that it was only members of the general public who were unable to participate because of lack of notice of the issues being considered. In November the County held a series of “workshops” for “practitioners”, who were exclusively developers and their attorneys. The changes to the published amendments about which we are concerned were negotiated by the County staff with practitioners at these workshops. Practitioners received a copy of Exhibit A prior to the November 21 hearing and addressed it at length, arguing that the Comprehensive Plan need not specifically designate sending and receiving zones for density units. This issue required fully informed public discussion, beyond a “practitioners’ workshop, for land development professionals. See Exhibit 6 describing workshop participants as practitioners. The workshop introduction made clear that it was addressed to practitioners. The very fact that developers and their attorneys found these two issues to be of such interest illuminates not only why the issues should have been clearly noticed to the public in general, but also that public participation in the drafting process should have been invited.

We appreciate your attention to these issues, as well as the willingness of the County staff and the County Board, to review these issues when the Plan comes back to them. Please call me if you have any questions about these materials. I can be reached at (941)698-1519 or medintzm@yahoo.com.

Very truly yours,

Marvin Medintz
President

cc: Charlotte County