

The Pine Island Land Plan 810/910 Rules in Context

There have been some suggestions that the Pine Island Land Plan restrictions relating to traffic counts should not be read literally. That is erroneous. The restriction on rezonings when the traffic count reached 810, and the restriction on new development orders when the traffic count reached 910 (copy attached) mean exactly what they say (i.e., they say what they mean and mean what they say). A short review of the historical context in which they were written reaffirms that view.

Zoning laws came to Lee County in the 1960's, but initially they were poorly administered. Developers, speculators, and confidence men manipulated if not controlled the process and the world-famous "Florida land scams" (which were not limited to Lee County) predominated during the 1960's and 1970's. To counter these ills, the Florida legislature, in the 1980's, passed growth management provisions requiring counties to establish land use plans. The Greater Pine Island Civic Association, under the leadership of Dr. Gene Boyd and his wife Ellie, seized on that opportunity to establish meaningful restrictions on runaway development on Pine Island. (Dr. Boyd, upon his death in 2003, was hailed by many as the father of smart growth in Lee County.)

The Boyds realized that the then existing population of Pine Island, plus growth expected from the already approved 6,800 vacant (but platted and sold) Pine Island house lots would completely expend the traffic capacity of Pine Island Road through Matlacha. The capacity, expressed as "level-of-service D" was 1010 vehicles per peak hour, annual average two-way trips. The Boyds proposed to Lee County that a percentage of that capacity be reserved to accommodate the 6,800 vacant lots, and that rezonings and development orders be restricted when capacity minus the reservation was reached.

Lee County was hesitant, but after considerable negotiations, a compromise was reached. It was written into the plan that rezoning would be restricted when the traffic count reached 80% of capacity, and that development orders would be restricted when the traffic count reached 90% of capacity. The plan as thus written went to the Department of Community Affairs for approval as required by state law. The DCA however found the plan not to be in compliance with the Growth Act in part because they considered the 80/90% provisions too vague and subject to manipulation. The DCA referred the issue to an Administrative Law Judge, and to settle the matter, Lee County and the DCA agreed that real numbers would be used rather than percentages. Thus, as enacted in 1989 by Lee County, the Land Plan 80% rule became 80% of 1010 or 808 (rounded to 810) and the 90% rule became 90% of 1010 or 909 (rounded to 910).

The 810-traffic count milestone was met in early 1997, and the 910-traffic count milestone was met in early 2003. To our knowledge, no rezonings or development orders have been issued since the milestones were met that would be inconsistent with either

restriction. However, the County Planning department has numerous requests for development orders pending, some of which propose very large developments.

The DCA's concern in 1989 that level-of-service standards might be manipulated to avoid the restrictions was obviously well founded. Several county staff elements have recently proposed that the level-of-service for Pine Island Road be recalculated to a number much higher than 1010. One proposal was for the number 1130 and another was for the number 1300. One department also suggested changing the method of counting vehicles to lessen the annual average traffic count. Nonetheless, even if the level-of-service calculations or traffic counts themselves were manipulated, the numbers 810 and 910 are enshrined into the law and cannot be changed without violating the agreement with the DCA.

One county staff element has proposed that not only should the level-of-service be recalculated, but also that their new number of full (100%) road capacity be the traffic count (instead of 910) at which development orders would be curtailed. That proposal not only ignores the plain wording of the 910 provision, but also totally ignores the express purpose of the provisions, which as stated in Policy 14.2.2, is "to recognize and give priority to the property rights previously granted by Lee County for about 6,800 additional dwelling units." Once those 6,800 dwelling units have been built (which could double the population of Pine Island even without additional development orders), Pine Island Road will clearly be operating at full capacity, and that's the whole point and purpose of the 810/910 provisions.

Why not just enforce the law the way it is written and the way it was expressly intended to be enforced?

A few final notes. Neither the 810 nor the 910 rule are absolutes, they only prohibit rezonings and development orders that would increase traffic on Pine Island Road through Matlacha. Nor are they permanent as written—the 2003 Plan Update (approved by the County Commissioners and the DCA, but now tied up in legal proceedings) lessens the harshness of both rules and allows resumption of development orders albeit with less housing density and more environmental controls.

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***Pine Island Plan Provisions Relating to the 810/910 Rules
and Implementing Regulations***

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.*

POLICY 14.2.2: *In order to recognize and give priority to the property rights previously granted by Lee County for about 6,800 additional dwelling units, the county will consider for adoption development regulations which address growth on Pine Island and which implement measures to gradually limit future development approvals. The effect of these regulations would be to appropriately reduce certain types of approvals at established thresholds prior to the adopted level-of-service standard being reached, as follows:*

** When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak hour, annual average two-way trips, the regulations will provide restrictions on further rezonings which would increase traffic on Pine Island Road.*

** When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 910 peak hour, annual average two-way trips, the regulations will provide restrictions on the further issuance of residential development orders (pursuant to the Development Standards Ordinance), or other measures to maintain the adopted level of service, until improvements can be made in accordance with this plan. (Amended by Ordinance No. 00-22)*

Land Development Code, Section 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.