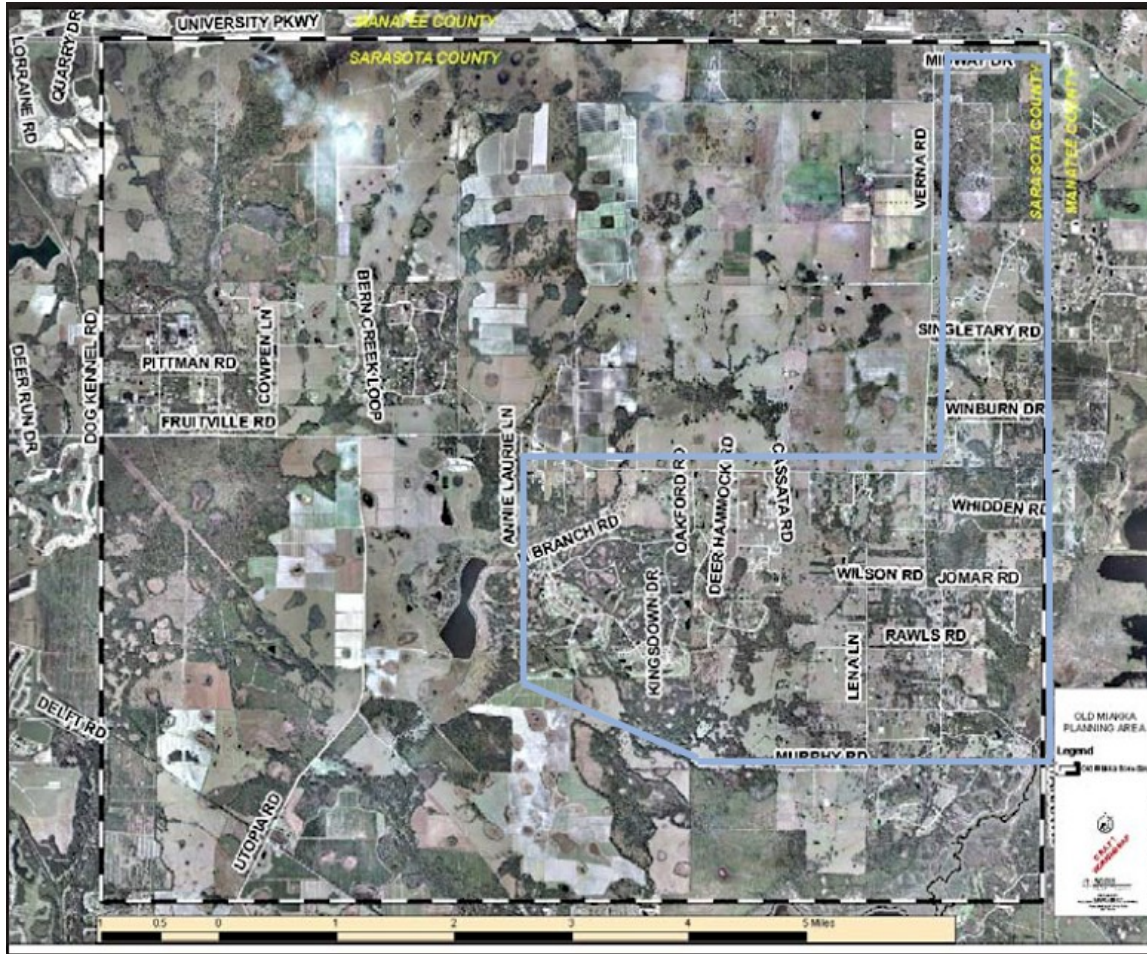


Citing concerns about changing development policies for eastern Sarasota County, Planning Commission recommends County Commission stop initiative to reduce density near Fruitville/Verna roads intersection

June 27, 2019 by Rachel Brown Hackney, Editor & Publisher

Old Miakka residents propose changes to Sarasota 2050 Future Land Use Maps



A graphic shows the Old Miakka Planning Area, outlined in blue. Image courtesy Sarasota County

In 2006, residents of the Old Miakka community in the eastern part of Sarasota County completed a two-year process of engagement with Sarasota County staff to craft a document called the *Old Miakka Neighborhood Plan*.

The introduction to that plan explained, “Old Miakka is not only an area of rich history but one of rural character and integrity. Of all things material, great and small, the residents’ love of the land and pastoral admiration is what they hold closest to their hearts.”

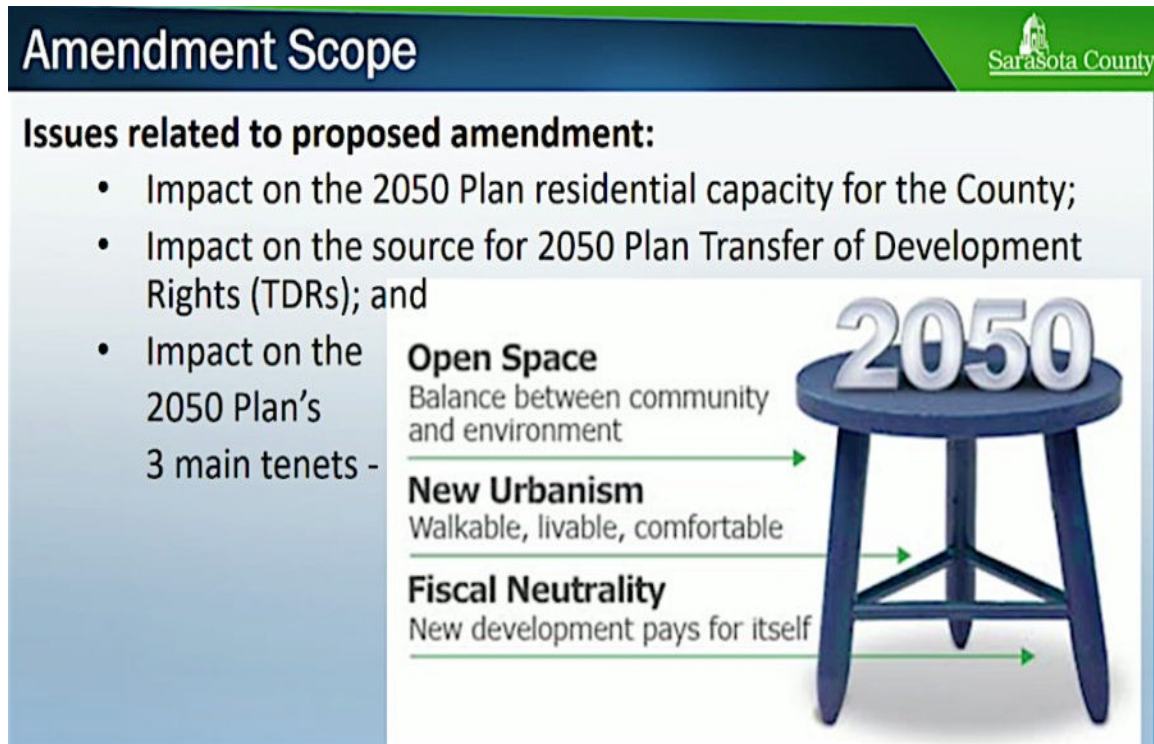
The introduction added, “As development continues to grow east of Sarasota County’s Urban Service Boundary, the neighborhood has begun to feel growing pains, generating significant concern about the community’s future.”

(The [Urban Service Boundary](#), county planning staff has explained, generally is the line of demarcation for development, with the areas west of the line having become urban and the land east of it considered to be rural.)

“This plan,” the introduction continued, “lays out a methodology that seeks to preserve the rural character the community holds so dear.”

The County Commission voted to accept the Old Miakka plan in 2006, four years after the original version of the county’s 2050 Plan was approved. The 2050 regulations specify how growth should occur east of the Urban Service Boundary.

[Sarasota 2050](#) has three primary tenets, the county’s planning staff points out: open space, to create a balance between the community and the environment; New Urbanism, which focuses on the construction of neighborhoods with commercial centers to serve residents’ daily needs, thereby reducing the need for vehicle use; and fiscal neutrality, meaning new developments pay for themselves.



A county staff graphic points out concerns about the amendment’s impacts on the Sarasota County 2050 Plan. Image courtesy Sarasota County

The approximately 6,000 acres in the northwest corner of Fruitville Road and Verna Road — an area close to Old Miakka — primarily was designated Village/Open Space under the 2050 Plan, with the option for those lands to be developed as Hamlets, as designated on the Future Land Use Map Series that accompanied the 2050 Plan regulations.

On June 20, a leader of a group called the Miakka Community Club told the Sarasota County Planning Commission that, after the 2006 County Commission vote on the Old Miakka Neighborhood Plan, “We went home thinking we had superseded [the Sarasota 2050 plan Future Land Use Map designations]” at the eastern end of Fruitville Road.

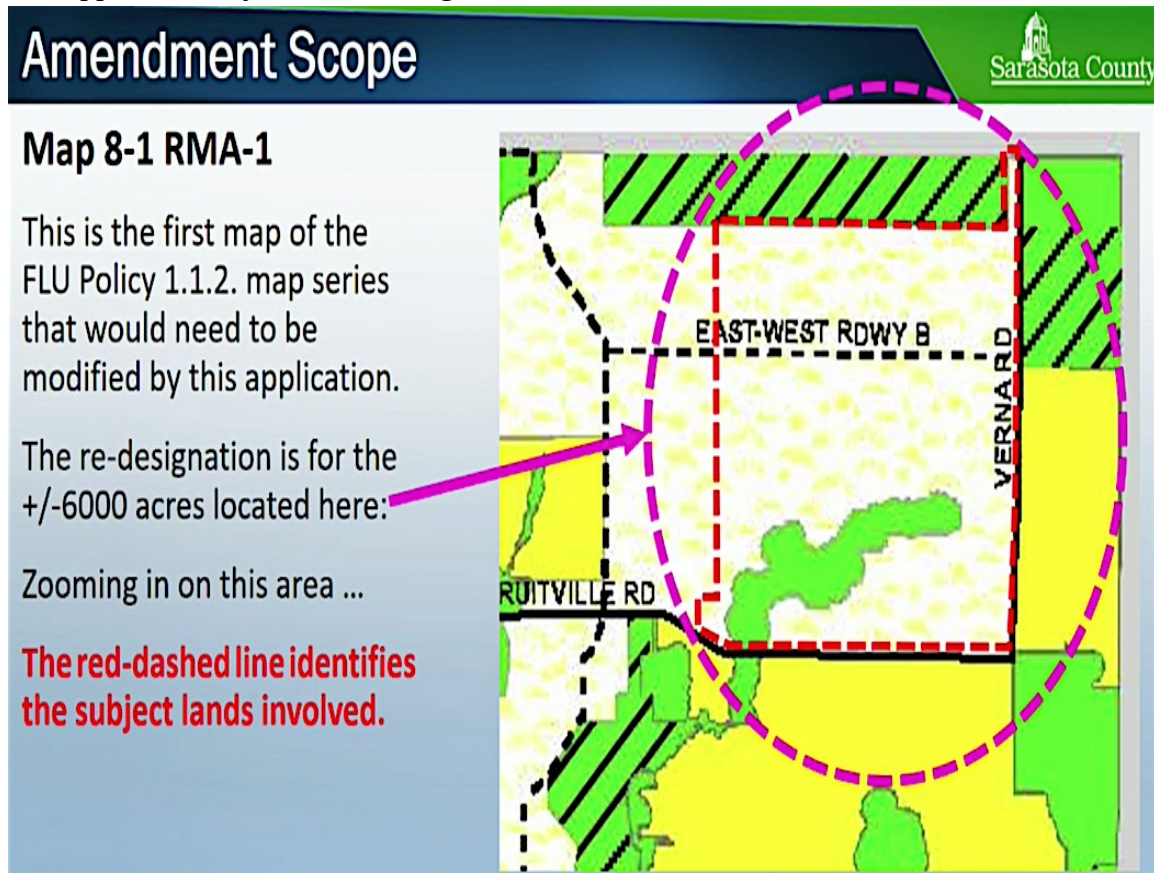
“We did not know that [the Old Miakka Plan] had to be adopted [for that to happen],” Becky Ayech testified.

Then, she continued, in 2015, construction began on the first Hamlet on Fruitville Road. “It wasn’t the 50 to 150 homes surrounded by agriculture,” as the Old Miakka Plan had envisioned, Ayech pointed out. Instead, it was 400 homes on about 400 acres, “and 600 acres of stormwater mosquito-breeding land that went with [the development].”

County planning staff since has referred to Hamlets as “urban sprawl,” Ayech told the Planning Commission.

With the growth taking place out east — and more development coming — Ayech and many of her neighbors in Old Miakka decided in March to submit to the county Planning and Development Services Department staff an application for the processing of a publicly initiated Comprehensive Plan amendment. Their goal is to accomplish what their 2006 neighborhood plan failed to do. The application seeks changes in the designation of the 6,000 acres near Old Miakka to Rural Heritage/Estates, which would have a much lower housing density. The amendment affects Maps 8-1 and 8-3 in the 2050 Plan chapter of the county’s Comprehensive Plan.

The application says the new designation would not cover Lake Park Estates and SMR Properties.



A county graphic shows the area — circled in purple — that would be designated Rural Heritage/Estates. Image courtesy Sarasota County

Yet, as one of the opponents of the proposal made clear to the Planning Commission on June 20, such changes in the 2050 Plan’s Future Land Use Maps at this point would threaten projects that have been years in the making.

More importantly, attorney Matt Brockway of Icard Merrill in Sarasota told the planning commissioners, the change likely would lead to lawsuits citing the state's [Bert Harris Act](#) and other areas of Florida law related to the government's "taking" of private property.

Speaking for four client companies that together own approximately 2,267 acres designated Village/Open Space and Hamlet under the aegis of the 2050 Plan, Brockway said, "We are vehemently opposed to the proposed Comprehensive Plan amendment, 2019-C."



Matt Brockway. Photo from the Icard Merrill website

His clients, Brockway said, are Indian Creek Development LLC, BDR Investments LLC, John Cannon Homes Eastmoor LLC and Myakka Ranch Holdings LLC.

After a public hearing that lasted close to two hours, the Planning Commission members voted unanimously to recommend that the County Commission deny the request of the applicants for the processing of the proposed amendment.

"This application is really nothing more than an attempt to go backwards under 2050, which the county spent millions and millions of taxpayer dollars on, doing studies, paying consultants," Planning Commissioner Colin Pember pointed out.

"2050 is not perfect," Pember added, "[but] it's more acceptable than this proposal ..."

It will be up to the County Commission to decide whether to direct staff to proceed with processing the proposed Old Myakka amendment. County Planner Bill Spaeth said he estimated that the work would take up to 100 hours of staff time.

On Sept. 11, the County Commission tentatively is scheduled to address the issues regarding the proposed Comprehensive Plan amendment, county Media Relations Officer Drew Winchester told *The Sarasota News Leader*.

An ancillary issue

During the board discussion after the June 20 hearing, Planning Commissioner Laura Benson cited another concern, which arose from the staff presentation that night.

Planner Spaeth had explained that Section 94-87 of the County Code allows the submission to the county of a publicly initiated Comprehensive Plan amendment with a minimum of 20 signatures of registered voters. In fact, Spaeth said, the Old Miakka application had 60 petition signatures, and staff had verified that 47 of the signers are registered voters.

In making the motion to recommend that the County Commission deny the request for the processing of the proposed amendment, Benson stressed of Ayech and the other signers of the petitions, “They are not owners of the property [that would be affected].”



Becky Ayech addresses the Planning Commission on June 20. News Leader photo

She expressed astonishment that as few as 20 people could initiate such an amendment. “This opens up a Pandora’s box of more requests from anybody with 20 friends who want to start a process. I think that’s a very bad precedent to set.”

(See the related story in this issue.)

In her testimony, Ayech pointed out that her group had been willing to pay a \$5,000 fee they thought was required under county planning guidelines to submit the application. Then staff apprised her of the process outlined in the County Code, she noted. “We were not trying to take [taxpayers’] money.”

Spaeth also explained that county staff — including department leaders — and the County Commission itself propose Comprehensive Plan amendments that are handled under the guidelines of the publicly initiated process.

However, staff must have formal direction from the County Commission to begin analyzing any proposed amendment, he said.

The process itself

At the outset of the Planning Commission public hearing, Spaeth told the board, “I do want to make it clear what this is about. ... This is *not* about the actual amendment.”

According to the process outlined in the County Code, he continued, the Planning Commission that night was being asked only whether or not to recommend that the County Commission allow staff to process the proposed Comprehensive Plan amendment.

The Rural Heritage/Estate designation the Miakka group is seeking for the property, Spaeth said, supports very low housing density or agricultural or equestrian uses.

(Under the county’s 2050 Plan regulations, maximum density for a Hamlet is one dwelling unit per gross acre. The maximum density for a Village is five dwelling units per acre, though that rises to six if the additional units are to be marketed as affordable housing. For Rural Heritage/Estate, the density can range from one dwelling unit per 5 acres to one unit per 160 acres.)

As Chair Kevin Cooper prepared to call on people who had signed up to address the board, he noted that he had enough cards for close to four hours of testimony. The commissioners could shorten the speaking time from 5 minutes to 3, he said, but “I’m not a fan of that.”

By count of *The Sarasota News Leader*, 35 people ended up making comments on the record. By the *News Leader*’s count, again, only four people urged the Planning Commission not to recommend that the proposed amendment go any further in the process that had begun. Among them was Rod Krebs, one of the owners of the property at the heart of the discussion.



Rod Krebs makes his remarks to the Planning Commission. News Leader photo

He is a partner in Indian Creek Development and BDR Investments, Krebs told the commissioners. Together, he continued, those companies have owned 1,938 acres of the 6,000, and the property has been designated for Hamlets since 2004.

“I’ve been a developer/homebuilder in Sarasota County for 48 years,” Krebs said. “The 2050 Plan is on track to utilize *allof* the designated Village land at less than 1.3 dwelling units per acre,” he stressed.

And thanks to an initiative on which he is working with county staff, Krebs continued, his Hamlet property will be “the last development option in North Sarasota County that will guarantee the elimination of septic tanks and wells.”

If the proposed Comprehensive Plan amendment were to win County Commission approval, Krebs said, it would guarantee “the proliferation of septic tanks and wells” during a time when the county and the state are dedicating “hundreds of millions of dollars to water quality improvement and septic-to-sewer plans.”

Many other speakers urged the commissioners just to allow the proposed amendment to go through the process outlined in the County Code. “Let the public have some input,” Howard Hickok said.

Some talked of their enjoyment of the rural area; others bemoaned the increasing amount of traffic.

Retired Deputy Charlie Rowe, who lives right on Fruitville Road, told the commissioners he had lived in the eastern part of the county for more than 30 years. He spent the morning of June 20 in his carport, he continued, counting cars. “I was amazed,” he said, having recorded 700 vehicles an hour driving by his house. “If we increase [the number of homes] that much more,” he added, “I don’t think we’re going to be able to handle it.”

Referencing remarks by opponents of the amendment, Alan Yaruss, who lives on a 5-acre parcel in Bern Creek, told the board, “I’m offended that anybody might think that we’re here as a circus with no clowns.”

A decision to make

Following the public comments, Chair Cooper said that in his years on the commission, he could not recall another example of such a request for a Comprehensive Plan amendment.

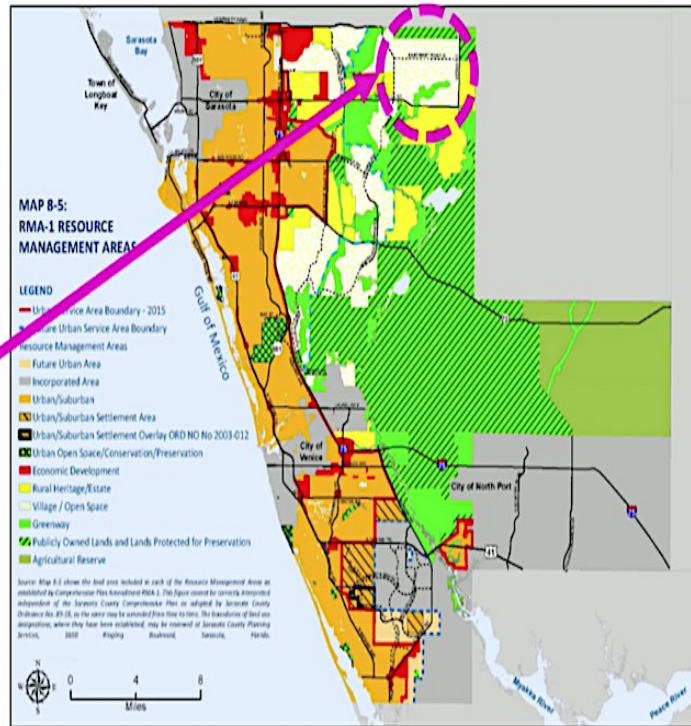
Spaeth confirmed that staff had not received another one from residents, as allowed by County Code Section 94-87. When Cooper asked whether Spaeth felt the Old Miakka group had “done everything it needs to do” to comply with the County Code, Spaeth replied, “In my estimation, yes.”

Amendment Scope

Map 8-1 RMA-1

This is the first map of the FLU Policy 1.1.2. map series that would need to be modified by this application.

The re-designation is for the +/-6000 acres located here:



A graphic shows the area at the heart of the amendment, as depicted on one of the Future Land Use Maps in the 2050 Plan. Image courtesy Sarasota County

Then Planning Commissioner Teresa Mast asked Spaeth whether, during his tenure with the county, any privately initiated Comprehensive Plan amendment ever had been proposed “that would impact another individual’s property and change the designation of that zoning?”

“To my knowledge, no,” he told her.

In response to other questions, Assistant County Attorney Joshua Moyer indicated that changing a designation on a county Future Land Use Map indeed might prompt an attempt at legal recourse under provisions of the Bert Harris Act. He had not specifically researched this proposed amendment, Moyer added, but, based on the testimony that night, “There would be some concerns on the county side [that litigation might ensue].”

CHAPTER 70
RELIEF FROM BURDENS ON REAL PROPERTY RIGHTS

- 70.001 Private property rights protection.
- 70.20 Balancing of interests.
- 70.45 Governmental exactions.
- 70.51 Land use and environmental dispute resolution.
- 70.80 Construction of ss. 70.001, 70.45, and 70.51.

70.001 Private property rights protection.—

(1) This act may be cited as the “Bert J. Harris, Jr., Private Property Rights Protection Act.” The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section.

(3) For purposes of this section:

(a) The existence of a “vested right” is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

(b) The term “existing use” means:

1. An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or
2. Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

This is a section of the Bert Harris Act in the Florida Statutes. Image courtesy State of Florida

“I think it’s within your judgment call to consider [recommending the County Commission allow the proposed amendment to be processed],” he continued. Nonetheless, Moye said, the planning commissioners could base their decision on whether they believed the amendment would be good or bad.

“To me, the 2050 Plan was extremely well vetted,” Planning Commissioner Andrew Stultz said, reprising comments Brockway of Icard Merrill and some of Stultz’s colleagues on the commission had made earlier.

Cooper noted that the 2050 Plan “was called a good compromise” after it was approved. Yet, the county still had to face litigation over it, he said.

Cooper believed, he continued, that “We should have just incrementally moved the Urban Service Boundary.”

Regardless of his feelings, however, Cooper said he had to consider the County Commission’s policy decisions regarding the 2050 Plan. “Until [the county commissioners] tell us otherwise as advisers, I have to assume that [the existing 2050 Plan] is what they want.”

Since the County Commission will vote on whether to direct staff to process the amendment, Cooper added, “They may say, ‘Hey, this is time to revisit this map.’”