



## Legislation Details (With Text)

**File #:** 19-0711

**Type:** Public Hearing      **Status:** Passed

**In control:** Board of County Commissioners

**On agenda:** 8/27/2019      **Final action:** 8/27/2019

**Title:** LEGISLATIVE PUBLIC HEARING TO CONSIDER ADOPTION OF COMPREHENSIVE PLAN AMENDMENT (CPA) 19-9, REALTY TRUST PARCELS, A FLUM AMENDMENT

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. AdoptionPacket.CPA19-9\_RealtyTrustStaffReport.pdf, 2. Ordinance.pdf, 3. ad.pdf, 4. Supplemental\_Memo.pdf

Date	Ver.	Action By	Action	Result
8/27/2019	1	Board of County Commissioners	approved	Pass

**PLACEMENT:** Public Hearings

### TITLE:

**LEGISLATIVE PUBLIC HEARING TO CONSIDER ADOPTION OF COMPREHENSIVE PLAN AMENDMENT (CPA) 19-9, REALTY TRUST PARCELS, A FLUM AMENDMENT**

### EXECUTIVE SUMMARY:

CPA 19-9, Realty Trust Parcels. The amendment proposes to change the future land use designation of a 9.54 acre parcel from Rural Density Residential (up to 0.5 units per acre) to Commercial Office/Residential future land use (COR) along with a concurrent rezoning from A-1A to COR-1.

**DEPARTMENT:** Growth Management

**PREPARED BY:** **Name:** Maria Jose, M.S.  
**Title:** Planner

**REQUESTED BY:** Real Estate Investment Realty Trust & 1750 SE Darling St Realty Trust, represented by Lucido & Associates

**PRESET:**

**PROCEDURES:** Plan Amendment

### BACKGROUND/RELATED STRATEGIC GOAL:

Ordinance No. 1087, adopted by the Board of County Commissioners on December 11, 2018, added Section 1.11.D(3) to the Comprehensive Plan Growth Management Plan (Comp Plan) thereby authorizing small-scale development amendments in accordance with Section 163.3187, Florida Statutes (FS). Small-scale development amendments require two public hearings. The first public

hearing is scheduled before the Local Planning Agency on August 15, 2019. The second public hearing is the adoption hearing before the Board of County Commissioners. Small-scale development amendments are not transmitted to the state land planning agency or other local and regional reviewing agencies.

A proposed amendment of the Comp Plan is eligible to be processed as a small-scale development amendment if:

- (a) ten or fewer acres are involved;
- (b) the proposed amendment does not involve a change to the text of the Goals, Objectives or Policies of the Comp Plan; however, text change relating directly to, and adopted simultaneously with, a small-scale amendment of the Future Land Use Map, are permitted; and,
- (c) the land that is the subject of the proposed amendment is not located within an area of critical state concern, unless the proposed amendment involves the construction of affordable housing and meets other statutory criteria.

Decisions approving or rejecting proposed amendments constitute legislative actions because they involve the policy making function of the BCC. They are different from rezoning and site plan decisions which are quasi-judicial actions involving the application of general rules of policy to specific situations. If approval of a Comprehensive Plan amendment is challenged by an affected person, the approval will be sustained if it complies with Florida Statutes regarding (1) procedural requirements (e.g. proper notice, public hearing), and (2) substantive requirements (e.g. adequate data and analysis, internal consistency). The fairly debatable standard is applicable to the review and requires judicial approval of a BCC approval if reasonable persons could differ as to the propriety of the decision. For example, if a petitioner were to claim that an amendment adopted a provision that was not consistent with an existing provision of the Comprehensive Plan, the court would strike down the amendment only if the court found no reasonable person would think that the two provisions are consistent.

If not timely-challenged, the effective date of a small-scale Comp Plan amendment is 31 days after adoption by the Board of County Commissioners. If timely challenged, an amendment does not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted small-scale development amendment is in compliance. If approval of a small-scale plan amendment is challenged, the process for the administrative review will be as provided in Section 163.3187(5), FS.

### **ISSUES:**

None.

### **LEGAL SUFFICIENCY REVIEW:**

This is a legislative matter. Legislative decisions are those in which the local government formulates policy rather than applying specific rules to a particular situation. A local government's approval or denial of an issue in its legislative capacity is typically subject to a fairly debatable standard of review. Fairly debatable means that the government's action must be upheld if reasonable minds could differ as to the propriety of the decision reached. Decisions subject to the fairly debatable standard of review need only be rationally related to a legitimate public purpose, such as the health, safety, and welfare of the public, to be valid. Given this broad discretion, only decisions that are arbitrary and capricious or illegal are subject to serious legal challenge.

**RECOMMENDED ACTION:**

**RECOMMENDATION**

Move that the Board approve the adoption of CPA 19-9, Realty Trust Parcels.

**ALTERNATIVE RECOMMENDATIONS**

Move that staff provide additional information and continue the item to a future date.

**FISCAL IMPACT:**

**RECOMMENDATION**

The applicant has paid a fee of \$6,100.

**ALTERNATIVE RECOMMENDATIONS**

1. As above

**DOCUMENT(S) REQUIRING ACTION:**

- |  |                                       |   |
|--|---------------------------------------|---|
| <input type="checkbox"/> Budget Transfer / Amendment | <input type="checkbox"/> Chair Letter | <input type="checkbox"/> Contract / Agreement |
| <input type="checkbox"/> Grant / Application         | <input type="checkbox"/> Notice       | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Other:                      | <input type="checkbox"/> Resolution   |   |

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