



Agenda Item Summary

File ID: 19-0814

PH-8

Meeting Date: 8/27/2019

PLACEMENT: Public Hearings

TITLE:

LEGISLATIVE PUBLIC HEARING TO CONSIDER ADOPTION OF COMPREHENSIVE PLAN AMENDMENT (CPA) 19-3, UTILITIES EXTENSION, AND CPA 19-14 SANITARY SEWER SERVICES ELEMENT

EXECUTIVE SUMMARY:

The combined application proposes a text amendment to Chapter 4, Future Land Use Element; Chapter 10, Sanitary Sewer Services Element, and Chapter 11, Potable Water Service Element/10 Year Water Supply Facilities Work Plan to allow for the provision of water and sewer services to a county property near Indiantown. It also proposes amended policies to improve consistency between Chapter 10, Sanitary Sewer Services Element and Chapter 11, Potable Water Service Element/10 Year Water Supply Facilities Work Plan. Other modifications include removing references to Indiantown.

DEPARTMENT: Growth Management

PREPARED BY: **Name:** Samantha Lovelady, AICP
Title: Principal Planner

REQUESTED BY: The Honorable Board of County Commissioners

PRESET:

PROCEDURES: None

BACKGROUND/RELATED STRATEGIC GOAL:

In accordance with Sections 163.3174(4)(a) and 163.3184(3)(c)1 and (11), Florida Statutes, all Plan amendments require three public hearings. In accordance with Section 163.3174(4)(a), the first public hearing for this Plan amendment was conducted before the Local Planning Agency on June 6, 2019. At the second hearing, held in accordance with Section 163.3184(3) and (11), the Board of County Commissioners determines whether to transmit or not transmit plan amendments as part of a set of amendments. At the second public hearing on this amendment, held on June 18, the County Commission approved the transmittal of the amendment to the State and Regional reviewing agencies.

Section 163.3184, Florida Statutes, requires state, regional and local reviewing agencies to provide comments to the County. The state and regional reviewing agencies are required to review the amendment to ascertain if there are any impacts to important state resources and facilities. The state and regional reviewing agencies are required to provide their comments, if any, to Martin County

within 30 days of the agency receipt of the amendments. If comments are received regarding impact to state resources and facilities, they must be addressed prior to adoption of the ordinance. Failure to successfully address impacts to state resources and facilities may form the basis for a challenge to the amendment after adoption.

Pursuant to Section 163.3184(3)(c)1 and (11), Florida Statutes, Martin County must hold the adoption public hearing within 180 days after the receipt of those comments. If Martin County fails to hold an adoption public hearing, the amendment shall be deemed withdrawn unless extended by agreement and notice to the State Land Planning Agency and any affected party that provided comments on the amendment. If approved within 180 days, Martin County has ten days to send the amendment adoption package to the State Land Planning Agency. The State Land Planning Agency has five days to find the amendment adoption package complete. If an affected party challenges the adoption of a plan amendment, the petition must be filed within 30 days of the adoption date of the amendment. If the State Land Planning Agency challenges the adoption of a plan amendment, the petition must be filed within 30 days of the completeness determination by the State Land Planning Agency.

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 approval of a Comprehensive Plan amendment is challenged by the State Land Planning Agency, the process for the administrative review will be as provided in Section 163.3184(5) F.S. Challenges to a denial of a Comprehensive Plan amendment, have an even more difficult burden. Since the Comprehensive Plan is already in place, the County does not have to meet the statutory, procedural or substantive requirements in order to deny an amendment. Thus, challengers ordinarily seek a remedy based on constitutional claims or some other basis.

ISSUES:

On June 6, 2019, the Local Planning Agency voted 5-0 to recommend approval to transmit the amendment. On June 18, 2019, the Board of County Commissioners voted 4-1 to transmit the amendment to the Department of Economic Opportunity (DEO). The amendment was transmitted to DEO and other reviewing State agencies. Although there were no official comments from any agency on the amendment, the Treasure Coast Regional Planning Council (TCRPC) recommended that there be "continued coordination between South Martin Regional Utility and the County regarding provision of utility services in order to avoid possible extra jurisdictional impacts to adjacent local governments and agencies." The correspondence from TCRPC is attached.

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 adopt CPA 19-3, Utilities Extension and 19-14 Chapter 10, Sanitary Sewer Services Element.

ALTERNATIVE RECOMMENDATIONS

1. Move that the Board deny the amendment.
2. Move that that staff provide additional information and continue the item to a future date.
3. Move that the Board continue the proposed amendment.

FISCAL IMPACT:

RECOMMENDATION

Staff time.

ALTERNATIVE RECOMMENDATIONS

Staff time.

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 | |

This document may be reproduced upon request in an alternative format by contacting the County ADA Coordinator (772) 320-3131, the County Administration Office (772) 288-5400, Florida Relay 711, or by completing our accessibility feedback form at www.martin.fl.us/accessibility-feedback <<http://www.martin.fl.us/accessibility-feedback>>.