



## Agenda Item Summary

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**File ID:** 19-1012

**PH-4**

**Meeting Date:** 10/22/2019

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**PLACEMENT:** Public Hearings

**TITLE:**

**LEGISLATIVE PUBLIC HEARING TO CONSIDER TRANSMITTAL OF COMPREHENSIVE PLAN AMENDMENT (CPA) 19-11, COVE SALERNO PARTNERS**

**EXECUTIVE SUMMARY:**

The request proposes a FLUM amendment on a 47.1 acre parcel to change the land use from Estate Density Residential (up to 2 units per acre) to Low Density Residential (up to 5 units per acre) along with a concurrent separate application to rezone from RE-1/2A to PUD residential. The parcel is located just east of Kanner Highway between Salerno Road and Cove Road, in Stuart. This item was continued from September 24th to October 22nd, as per the applicant's request.

**DEPARTMENT:** Growth Management

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

**REQUESTED BY:** Cove/Salerno Partners LLC, represented by Lucido & Associates

**PRESET:**

**PROCEDURES:** Plan Amendment

**BACKGROUND/RELATED STRATEGIC GOAL:**

In accordance with Sections 163.3174(4)(a) and 163.3184(3)(c)1 and (11), Florida Statutes, all Comprehensive Plan amendments require three public hearings. The first public hearing for this Plan amendment was conducted before the Local Planning Agency on September 5, 2019. Today's is the second hearing, at which the Board of County Commissioners determines whether to transmit or not transmit the plan amendment to the State Land Planning Agency.

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 amendment. If comments are received regarding impact to state resources and facilities, they must be addressed prior to adoption of the Plan Amendment. Failure to successfully address impacts to state resources and facilities may form the basis for a challenge to the amendment after adoption.

The adoption public hearing is the third required public hearing. 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 reviewing agency 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 the Plan amendment is adopted, Martin County has ten days to send the amendment 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 Plan 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 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:**

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 for transmittal of CPA 19-11, Cove Salerno Partners, to the Department

of Economic Opportunity.

### **ALTERNATIVE RECOMMENDATIONS**

1. Move that staff make additional changes and transmit CPA 19-11, Cove Salerno Partners, to the Department of Economic Opportunity.
2. Move that staff provide additional information and continue the item to a future date.

### **FISCAL IMPACT:**

### **RECOMMENDATION**

Staff time.

### **ALTERNATIVE RECOMMENDATIONS**

### **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 type="checkbox"/> Ordinance            |
| <input type="checkbox"/> Other:                      | <input type="checkbox"/> Resolution   |   |

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