



Agenda Item Summary

File ID: 20-0337

PH-4

Meeting Date: 2/18/2020

PLACEMENT: Public Hearings

TITLE:

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

EXECUTIVE SUMMARY:

The request proposes an amendment to the Comprehensive Growth Management Plan to change the future land use designation of a 47.1 acre parcel located just east of SW Kanner Highway between SE Salerno Road and SE Cove Road. The Board of County Commissioners approved transmittal of the amendment changing the future land use designation from Residential Estate Density (up to 2 units per acre) to Low Density Residential (up to 5 units per acre).

DEPARTMENT: Growth Management

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

REQUESTED BY: Cove/Salerno Partners, LLC

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 (FS), all 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. The second public hearing was conducted before the Board of County Commissioners (BCC) on October 22, 2019, at which time the BCC approved transmittal of the amendment to the State Land Planning Agency and other state and regional reviewing agencies.

Upon transmittal, Section 163.3184, FS, requires state and regional reviewing agencies to provide comments to the County regarding any impacts to important state resources and facilities. The state and regional reviewing agencies must provide their comments, if any, to Martin County within 30 days of receipt of the amendments. 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), FS, 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 If Martin County fails to hold an adoption public hearing, the amendment is deemed withdrawn unless extended by agreement and notice to the State Land Planning Agency and any affected party that provided comments on the amendment.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 amendment is adopted, Martin County has 10 working days to send the amendment package to the State Land Planning Agency. The State Land Planning Agency has 5 working days to determine whether the amendment adoption package is complete.

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 plan amendment adopted under the state expedited review process is 31 days after the State Land Planning Agency notifies the County that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the State Land Planning Agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance. If approval of a Plan amendment is challenged, the process for the administrative review will be as provided in Section 163.3184(5), FS.

ISSUES:

The applicant has proposed to rezone the property to Planned Unit Development. That request will be presented on a future date.

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 19-11, Cove Salerno Partners.

ALTERNATIVE RECOMMENDATIONS

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

FISCAL IMPACT:

RECOMMENDATION

Application fees of \$6100 received.

ALTERNATIVE RECOMMENDATIONS

1. As above

DOCUMENT(S) REQUIRING ACTION:

- ☐ Budget Transfer / Amendment ☐ Chair Letter ☐ Contract / Agreement
☐ Grant / Application ☐ Notice ☒ Ordinance ☐ Resolution
☐ Other:

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