

**CPA2014-09
POLICY 18.1.16 TEXT
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

Privately Sponsored Application
and Staff Analysis

Non-Transmittal Document

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May 20, 2015

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2014-09**

Text Amendment **Map Amendment**

This Document Contains the Following Reviews	
<input checked="" type="checkbox"/>	Staff Review
<input checked="" type="checkbox"/>	Local Planning Agency Review and Recommendation
<input checked="" type="checkbox"/>	Board of County Commissioners Hearing for Transmittal
	Staff Response to the DCA Objections, Recommendations, and Comments (ORC) Report
	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: February 13, 2015

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT/REPRESENTATIVES:

Barbara Heine

2. REQUEST:

Amend Policy 18.1.16 to remove language that acknowledges that significant deviations may be made from Chapter 32 of the Land Development Code to accommodate development of a Compact Planned Development within Area 9 of the University Community.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

Staff recommends that the Board of County Commissioners *not transmit* the proposed amendment to the Future Land Use Element of the Lee Plan.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- The proposed privately initiated amendment to the Lee Plan was received on November 18, 2014.
- Policy 18.1.16 is specific to one property within the University Community Future Land Use Category, which is currently owned by Alico West Fund LLC.
- Policy 18.1.16, as currently written, acknowledges that the developer of the Alico West Area 9 property may need deviations from the Land Development Code to accommodate development.
- Florida Statute 163.3194 requires that all development be consistent with the Comprehensive Plan. Lee Plan Policy 18.1.16 has been reviewed by the state reviewing agencies and has been determined to be consistent with applicable Florida Statutes and the Lee Plan.
- Deviations from Chapter 32 of the Land Development Code could continue to be permitted even if the provision regarding “significant deviations” was deleted.
- Section 32-502(d) and (e) of the Land Development Code allows for deviations from the Land Development Code.

C. BACKGROUND INFORMATION

The University Community future land use category was initially adopted into the Lee Plan and Future Land Use Map on October 27, 1992 by Ordinance 92-47, which adopted PAM/T 92-02, Florida’s Tenth University. This Lee Plan amendment adopted the University Community future land use category descriptor policy, Policy 1.1.9, and Goal 20 (later renumbered to Goal 18): University Community, which provided generalized descriptions of the development that was anticipated to surround what is now Florida Gulf Coast University.

The University Community area was expanded in 2010 to include a 9th area. This was accomplished through an amendment to the Lee Plan adopted on October 20, 2010 by Ordinance 10-40 (Attachment 1), which adopted CPA2009-00001, Alico West. The Alico West Lee Plan amendment included details about the development of Area 9 of the University Community. The property that was the subject of Area 9 was previously an aggregate mine and was not originally included in the University Community area because it was not consistent with the desired uses. A South Florida Water Management District (SFWMD) Environmental Resource Permit (ERP) dated January 12, 2015 states that there are approximately 70 acres of wetlands on the lands that were added to the University Community.

Pursuant to Policy 18.1.16, development within Area 9 must be achieved under a Compact Planned Development rezoning and meet the requirements of Chapter 32 of the Land Development Code. Compact Planned Developments utilize a form based code.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

The Subject Lee Plan text amendment proposes to amend Policy 18.1.16 of the Lee Plan as shown below in strike through formatting:

***POLICY 18.1.16:** For those lands in Area 9, all development must be designed to enhance and support the University. All rezonings in this area must include a specific finding that the proposed uses qualify as Associated Support Development, as that term is defined in the glossary. The final design and components will be determined as part of the rezoning process and must be consistent with the following development standards:*

- 1. **Mixed Use:** Development must be in the Traditional Neighborhood Development form, as defined in the Glossary section of the Lee Plan, and consistent with the intent of Goal 4: Sustainable Development Design of the Lee Plan. Development on Alico West, Area 9, must be rezoned to a Compact Planned Development as specified by the Lee County Land Development Code, ~~recognizing there may be significant deviations to accommodate the proposed development.~~ The following minimum and maximum development parameters per use are approved for Area 9, subject to transportation mitigation requirements:*

Residential: Minimum 800 units, maximum 1,950 units;

Retail: Minimum 200,000 square feet, maximum 543,000 square feet (Retail maximum may be reduced, to no less than the 200,000 square feet, to allow additional Office or Research and Development square feet at a 1 to 1 rate.);

Office/Research/Development: Minimum 400,000 square feet, maximum of 918,000 square feet (additional Office/Research/Development square feet may be added to the maximum if the maximum retail is reduced as described in the Retail parameters above);

Donation Site to University: Minimum 40,000 square feet, maximum 400,000 square feet; and

Hotel: Minimum 0 rooms, maximum 250 rooms.

Policy 18.1.16 is specific to Area 9 of the University Community, which was created as a result of CPA2009-00001, Alico West. As previously stated, development within Area 9 of the University Community is required to be rezoned as a Compact Planned Development

utilizing Chapter 32 of the Land Development Code. Because this form of development approval has not previously been utilized at the scale anticipated within Area 9 of the University Community, the applicant of CPA2009-00001 requested that the Lee Plan acknowledge significant deviations may be required to accommodate the form of development required by the Land Development Code. The adoption of Lee Plan Policy 18.1.16 did not create a mechanism to permit deviations from the Land Development Code; therefore deleting the portion as proposed by the applicant would not remove the ability of a developer to request deviations.

The approval process for a Compact Planned Development as outlined in the Chapter 32 of the Land Development Code allows for deviations to be requested from Chapter 32 as well as Chapters 10 and 34 as provided below:

*(d) **Deviations From Chapter 32** An applicant must clearly identify deviations requested from the specific standards of chapter 32. The Board of County Commissioners will decide whether to accept, modify, or reject each proposed deviation during the planned development rezoning process based on a determination as to the consistency of each deviation with this chapter, good planning practice for compact communities, and the deviation criteria in chapters 10 and 34. Potential deviations specific to compact communities include the following:*

(1) Modified block standards (section 32-225).

(2) For street types shown in article II, modified cross-sections (section 32-226) and/or modified streetscape standards (section 32-227).

(3) Additional street types, accompanied by proposed cross-sections (section 32-226) and streetscape standards (section 32-227).

(4) For lots types shown in article II, modified transect zone assignments (table 32-241), modified property development regulations (table 32-243), and/or modified use regulations (table 32-244).

(5) Additional lot types, accompanied by allowable transect zone assignments (table 32-241), proposed property development regulations (table 32-243), and proposed use regulations (table 32-244).

*(e) **Deviations From Other Chapters.** Deviations from other chapters of this Code may be requested as provided in chapters 10 and 34.*

(Ord. No. 10-25 , § 3, 6-8-10)

Consistent with Land Development Code Section 32-502 (d) and (e), Policy 18.1.16 acknowledges that the developer of the Alico West property may receive deviations from the Land Development Code. However, Policy 18.1.16 does not allow for deviations from the Lee Plan consistent with Florida Statute 163.3194, which requires that all development shall be consistent with the local Comprehensive Plans. Lee Plan Policy has been reviewed by the state reviewing agencies and has been determined to be consistent with applicable Florida Statutes and the Lee Plan.

CONSISTENCY WITH THE LEE PLAN

The proposed amendment would not impact consistency with the Lee Plan. However staff finds that the intent of the language that is proposed for deletion under the subject application was clear at the time CPA2009-00001, Alico West, was adopted. The intent, at the request of the Alico West applicant, was to provide flexibility within the Compact Planned Development zoning process necessary to assure that the resulting development of Area 9 of the University Community was able to provide associated support development to Florida Gulf Coast University while remaining consistent with Policy 18.1.16 of the Lee Plan.

CONSISTENCY WITH FEDERAL AND STATE REQUIREMENTS

The amendment would not have any impact on federal or state requirements.

B. STAFF RECOMMENDATION

Staff recommends that the Board of County Commissioners *not transmit* the proposed amendment to the Future Land Use Element of the Lee Plan. In addition, the County Attorney's office objects to the request and recommends that the Board not transmit the proposed amendment due to the fact the amendment would apply to a specific property that is not owned by the applicant for CPA2014-00009.

**PART III - LOCAL PLANNING AGENCY
REVIEW AND RECOMMENDATION**

DATE OF PUBLIC HEARING: February 23, 2015

A. LOCAL PLANNING AGENCY REVIEW

Staff gave a brief presentation regarding the proposed amendment, making a recommendation that the BOCC not transmit the proposed amendment. One Member of the LPA asked a question about the ownership of the affected property. The County Attorney's Office provided a response clarifying that the applicant did not own the affected property.

The applicant provided background information and outlined the proposed amendment. The applicant provided a handout that was distributed during the meeting (Attachment 2).

A representative for the affected property addressed the LPA concerning the proposed amendment. The representative requested that the LPA recommend non-transmittal to the BOCC. No other public input was received, so the public portion segment was closed.

One member of the LPA noted that he would be abstaining from a vote on this item because he had performed some land management work for the affected property's owner.

Please see attached minutes from the February 23, 2015 LPA Hearing for more details (Attachment 3).

A motion was made that the LPA recommend the BOCC *not transmit* the proposed change. The motion was called and passed 5-0.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The LPA agreed with staff and recommends that the Lee County Board of County Commissioners *not transmit* the proposed Lee Plan amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The LPA accepted the basis and recommended findings of fact as advanced by staff.

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
TIMOTHY BROWN	<u>AYE</u>
DENNIS CHURCH	<u>AYE</u>
JIM GREEN	<u>ABSENT</u>
RICK JOYCE	<u>ABSTAIN</u>
DAVID MULICKA	<u>AYE</u>
GARY TASMAN	<u>AYE</u>

**PART IV - BOARD OF COUNTY COMMISSIONERS
HEARING FOR TRANSMITTAL OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: May 20, 2015

A. BOARD REVIEW

Staff gave a brief presentation on the proposed amendment recommending the Board of County Commissioners not transmit the proposed amendment because the applicant was not the owner of the affected property. The applicants' representative then made a presentation to the Board of County Commissioners.

One member of the public, representing the affected property owner, addressed the Board of County Commissioners, requesting that the proposed amendment not be transmitted.

After brief discussion, a motion was made that the BOCC *not transmit* the proposed change. The motion was called and passed 5-0.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY

1. RECOMMENDATION:

The Lee County Board of County Commissioners did *not transmit* the proposed Lee Plan amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

The Board of County Commissioners accepted the basis and recommended findings of fact as advanced by staff and the LPA.

C. VOTE:

1. Motion Not to Transmit:

LARRY KIKER	AYE _____
BRIAN HAMMAN	AYE _____
FRANK MANN	AYE _____
JOHN MANNING	AYE _____
CECIL L PENDERGRASS	AYE _____