

**LEE COUNTY**

SOUTHWEST FLORIDA

PLANNING DIVISION

M E M O R A N D U M

to: Board of County Commissioners
from: *Paul C. Connor, AICP, Director*, Division of Planning
subject: Lee County's 2000/2001 Regular Comprehensive Plan Amendment Cycle
date: December 21, 2001

Attached are the agenda and a portion of the staff reports for the public hearing to be held beginning at 9:30 A.M. on Thursday, January 10th, 2001. This is an adoption hearing for the 2000/2001 Comprehensive Plan Amendment Cycle. The Board of County Commissioners transmitted the 2000/2001 Lee Plan amendments to the State for review on September 12, 2001. The Department of Community Affairs (DCA) issued its Objections, Recommendations and Comments (ORC) Report on November 21, 2001. The DCA did not pose any objections, recommendations, or comments on 22 of the 24 transmitted amendments. The two amendments that were objected to were PAM 98-06 and CPA2000-02.

The DCA offered objections to PAM 98-06, which is a privately-initiated request to amend the Future Land Use Map series for a portion of a specified parcel of land located in Section 20, Township 46 South, Range 25 East to change the classification shown on Map 1, the Future Land Use Map, from "Rural" to "Outlying Suburban," and also, to amend Lee Plan Policy 1.1.6 and Table 1(a), Note 6. This amendment has been placed on the Administrative Agenda. Staff is still working with the applicant in their efforts to respond to the objections of DCA, although staff has not received any new information as of this writing that would change the original staff recommendation. The staff report and applicant's response to the objections of the DCA will be provided to the BoCC under a separate cover next week.

The DCA also offered an objection to CPA2000-00002, which is a privately-initiated amendment to amend Goal 15, Gasparilla Island, to limit commercial and industrial uses within those portions of the Boca Bay Community that contain the Port District zoning designation. Staff is currently working with representatives from DCA and the applicant to resolve this issue, and anticipates that the outstanding issues will be resolved to the satisfaction of the DCA. The staff report and response to DCA's objections will be provided to the BoCC under a separate cover next week.

Three other amendments have been revised to reflect recent updates that have occurred since the transmittal hearing. One of these, CPA2000-00019, is the amendment addressing the Estero Community Planning Effort. Representatives of the Estero Community Planning Panel submitted several proposed modifications to the transmittal language on December 21, 2001. Staff is still reviewing these modifications and will provide recommendations on them as part of the adoption staff report. The staff report for this amendment will be provided to the BoCC under a separate cover next week.

Another amendment that will require modification between the transmittal hearing and the adoption hearing is CPA2000-00027, which proposes to update the Capital Improvements Program (CIP) in

the Lee Plan. Planning staff will be receiving the latest CIP from Budget Services staff, and will incorporate this document into the Lee Plan. The staff report for this amendment will be provided to the BoCC under a separate cover next week.

The final amendment that might require modification from the transmittal stage is CPA2000-00015, which proposes to modify setbacks for golf course maintenance facilities from public roadways and adjacent residential properties in the Density Reduction/Groundwater Resource areas. Staff is still finalizing its recommendation on this amendment. The staff report and final recommendation will be provided to the BoCC under a separate cover next week.

Other than these 5 amendments that will require modifications as noted above, the remaining documents were simply updated to reflect that there were no objections, recommendations, or comments by the DCA. As stated previously, the staff reports and other background materials for these 5 amendments will be provided to the Board next week, and should be added to the materials received with this correspondence.

If you have any questions regarding the adoption hearing, do not hesitate to call me at 479-8309.

cc: *Donald Stilwell, County Administrator*
 Mary Gibbs, Director, Department of Community Development
 Minutes
 Lee Cares
 Tim Jones, Assistant County Attorney
 Janet Watermeier, Director, Economic Development
 Dave Loveland, DOT
 Diana Parker, County Hearing Examiner

**CPA2000-11
BoCC SPONSORED
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

BoCC Adoption Document
for the
January 10, 2002 Public Hearing

*Lee County Planning Division
1500 Monroe Street
P.O. Box 398
Fort Myers, FL 33902-0398
(941) 479-8585*

November 21, 2001

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
COMPREHENSIVE PLAN AMENDMENT
CPA2000-11**

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Text Amendment

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Map Amendment

	This Document Contains the Following Reviews:
✓	Staff Review
✓	Local Planning Agency Review and Recommendation
✓	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: January 8, 2001

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. APPLICANT:

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
REPRESENTED BY LEE COUNTY DIVISION OF PLANNING

2. REQUEST:

Amend the Future Land Use Element by modifying Policy 6.1.2.6 to clarify that extension of the interstate interchange use is not by right, but is permissive and subject to county review and approval.

B. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY:

1. RECOMMENDATION: Planning staff recommends that the Board of County Commissioners transmit the proposed amendment. The recommended language changes are shown below.

POLICY 6.1.2.....

6. Any contiguous property under one ownership may, at the discretion of the Board of County Commissioners, be developed as part of the interstate interchange, except in the Mixed Use Interchange district, provided the property under contiguous ownership to be developed as part of the interstate interchange does not extend beyond three-quarters of a mile from the interchange centerpoint. Applications seeking interstate uses outside of the interstate highway interchange areas will be evaluated by the Board considering the following factors: percentage

of the property within the interstate interchange; compatibility with existing adjacent land uses; and, compatibility with surrounding Future Land Use Categories. This is intended to promote planned developments under unified ownership and control, and to insure proper spacing of access points. (Amended by Ordinance No. 99-18)

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- Policy 6.1.2.6 states that “Any contiguous property under one ownership **may** be developed as part of the interstate interchange...” The word “may” indicates that the expansion of the interchange is a discretionary action by the County, and not a right held by the property owner or applicant.
- Policy 6.1.2.6 states that in order to qualify for expansion of the interchange, the property in question must be under one ownership and must be within three-quarters of a mile from the interchange centerpoint. Meeting this criteria only serves to qualify a property for consideration to expand the interchange. It does not ensure the expansion of the interchange in any way.
- The Office of the Hearing Examiner has opined in a recent case (DCI960994 and DRI960993) that the expansion of Interchange uses described in Policy 6.1.2.6 is not a “right” held solely within the discretion of an applicant/property owner of lands located within and adjacent to an interchange land use category. Expansion of the interchange is something that is reviewed by county staff and is subsequently approved or denied by the Board of County Commissioners.
- The expansion of interchange land uses to surrounding properties has the potential to adversely effect the surrounding existing and future land uses in a particular area.

C. BACKGROUND INFORMATION

This amendment was initiated by the Board of County Commissioners on September 19, 2000. The amendment was initiated in response to a recent DRI and rezoning application for the Gulf Coast Towne Center property near the southeast quadrant of I-75 and Alico Road. The property was located partially in the University Village Interchange land use category and partially in the University Community land use category. Approximately six percent of the property was located within the University Village Interchange, with the remaining ninety-four percent in the University Community.

The applicant in this case requested a significant amount of retail commercial development which staff argued would not be entirely appropriate in the University Community, but would have been more appropriate in the University Village Interchange. The applicant wanted to expand the interchange uses, as specified in Policy 6.1.2.6, in order to gain approval for a higher level of retail commercial development. The applicant argued that they were entitled to the expansion of the interchange simply because they chose that option and because they met the eligibility requirements outlined in the policy. County staff, on the other hand, argued that it had the right to review this issue and make a recommendation to the BoCC, who would ultimately decide whether to grant or deny the request.

The Gulf Coast Towne Center case brought into question, for the first time, the issue of whether the interchange expansion was a choice made by the developer or a discretionary action on the part of the county. It was the first case where there was a disagreement on the appropriateness of the interchange expansion. Given the confusion surrounding this issue on this case, staff thought that the policy needed

clarification to reflect the fact that the expansion of the interchange is a discretionary action on the part of the county, and not solely a choice made by the developer. This amendment represents that clarification.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

Planning staff has always considered the expansion of the interchange as outlined in Policy 6.1.2.6 to be a discretionary action by the county. Policy 6.1.2.6 of the Lee Plan is reproduced below.

POLICY 6.1.2.....

6. Any contiguous property under one ownership may be developed as part of the interstate interchange provided the property under contiguous ownership to be developed as part of the interstate interchange does not extend beyond three-quarters of a mile from the interchange centerpoint. This is intended to promote planned developments under unified ownership and control, and to insure proper spacing of access points.

The Policy states that any contiguous property under one ownership “may” be developed as part of the interstate interchange. The word “may” indicates that there is some discretion involved in the interchange expansion, although it is not specified. A review of past rezoning cases, however, could lead to the incorrect conclusion that the expansion of the interchange is a choice made by the developer or property owner. In reviewing the past zoning cases, one could make the conclusion that once the developer or applicant made the choice to extend the interchange, it was simply accepted by staff, the Hearing Examiner, and the Board of County Commissioners. This conclusion could be reached because staff agreed with the applicant in each case that it was appropriate to extend the interchange. The language in the Hearing Examiner recommendations on each case also gave the false impression that the interchange was extended by the choice of the developer or applicant. It was thought that if the property was under one ownership and was within three-quarters of a mile from the interchange, then the interchange was automatically extended. This is an incorrect assumption.

In each of the cases in which interchange expansion was at issue, the property was under one ownership and did not extend beyond three-quarters of a mile from the interchange centerpoint. Also, in each of these cases, *at least* forty percent of the property was already located within the applicable interchange category. So, when the applicant or developer seemingly “chose” to extend the interchange in these cases, it did not meet with any resistance from county staff because a large portion of each property was within an interchange category, making it reasonable to extend the interchange. Also, the expansion of the interchange in these cases did not present any potential compatibility problems with the surrounding areas. The following is a brief summary of each of the cases in which expansion of the interchange was an issue.

1. University Plaza CPD, 1996, Case #96-11-250.03Z - In this case, approximately 26 of the property’s 40 total acres were within the University Village Interchange category, with the remainder being within the University Village category. Approximately two-thirds of the property was already within the Interchange category. Additionally, this property was located immediately at the interchange, meaning there was no other property between the interchange and this CPD.
2. Palomino Park CPD, 1991, Case #89-6-27-1-DCI(a) - In this CPD, approximately 260 acres were designated General Interchange, while the remaining 360 acres were designated

Outlying Suburban. Approximately 42 percent of the site was within the interchange category. This property was not immediately at the interchange, but it was completely within the three-quarter mile box.

3. Timberland & Tiburon DRI, 1997 amendment, Case #95-08-002.03Z 02.01 and 04Z 03.01- This case added the TECO Arena use to the 794.5-acre DRI. In order to do this, the interchange designation had to be extended northward from the 75-acre CPD/Miromar Outlet Mall area to include the 30-acre arena parcel which was designated Suburban. Given the total of 105 acres within the interchange designation, the expansion only applied to about 34 percent of the property.
4. Bernwood Park of Commerce, 1995, Case #95-01-013.03Z - The 74-acre Bernwood site was evenly divided between General Interchange and Urban Community. Staff advised the applicant that they could develop the entire site under the General Interchange category.

In each of the above cases, staff thought that the expansion of the interchange was reasonable and that it fit within the intent of Policy 6.1.2.6. In the Gulf Coast Towne Center DRI, however, only about six percent of the 244-acre property was located within the University Village Interchange category, with the remainder being within the University Community land use category. Of the 244-acre Gulf Coast Towne Center site, only about 14 of the 244 acres were within the University Village Interchange. Staff advised that the expansion of the interchange was not appropriate in this instance because such a small percentage of the property fell within the interchange designation. Additionally, staff thought the expansion of the interchange would have eliminated an excessive amount of the rare University Community land use category. The developer, on the other hand, argued that the property was under one ownership and was within three-quarters of a mile from the interchange centerpoint, therefore, it was entitled to the interchange expansion. The policy did not clearly provide county staff with the undisputed ability to have any discretion over the expansion of an interchange.

Upon hearing both sides of the argument, the Hearing Examiner ruled that the expansion of the interchange described in Policy 6.1.2.6 is not a "right" held solely within the discretion of an applicant or property owner of lands located within and adjacent to an interchange land use category. The Hearing Examiner made a finding that it was not appropriate in this case to extend the interchange. According to the Hearing Examiner, the expansion of the interchange is something that is reviewed by county staff and is subsequently decided on by the Board of County Commissioners. It is a discretionary action. The fact that the Hearing Examiner ruled that the interchange should not be extended proves that there are some instances where the expansion of the interchange is not necessarily appropriate.

The existing language of Policy 6.1.2.6, while it implies that the county might have some discretion regarding the expansion of the interchange, it does not state it clearly enough to avoid disputes on the issue. While the expansion of the interchange has historically been supported by the county, there is a possibility, such as with the Gulf Coast Towne Center DRI, that the expansion of the interchange might not always be clearly reasonable and appropriate. There are a few scenarios where the expansion of the interchange might not be appropriate. The first would be if there was only a small percentage of the entire property within the interchange category. The second would be if interchange uses were allowed to expand, it might bring them closer to adjacent existing land uses, resulting in incompatible land uses in some cases. A third scenario would be if the expansion of the interchange would introduce new uses in an area, leading to compatibility problems with the surrounding Future Land Use category. This could occur if the adjacent

land use category was one of the Non-Urban categories defined in the Lee Plan. The interchange expansion could potentially eliminate the step-down effect from the highly intense interchange uses to low intensity residential uses and non-urban areas.

Expanding interchange uses across an entire property when only a small portion of the property has an interchange designation represents a misuse of Policy 6.1.2.6. Furthermore, it is not possible to define a minimum percentage of a property that must be within the interchange in order to allow the interchange expansion. Any defined percentage would be arbitrary in nature. Instead, it makes more sense to allow the expansion of the interchange to be granted via a process similar to the special case provisions given in Policy 6.1.2.8. The most reasonable way to grant the interchange expansion, in the opinion of staff, would be to put the decision fully in the hands of the Board of County Commissioners, and allow the Board to make the final decision based on a set of loosely defined criteria. These criteria would include the percentage of the property within the interchange, the existing adjacent land uses, and the surrounding Future Land Use categories.

B. CONCLUSIONS

Policy 6.1.2.6 states that "any contiguous property under one ownership **may** be developed as part of the interstate interchange..." This language does not guarantee that the interchange uses will be extended, nor does it state that the expansion of interchange uses is a choice made solely by the developer. The policy provides that certain criteria must be met in order to qualify for the expansion of the interchange, and once those criteria have been met, then the County has the ability to decide whether or not to allow it. The decision of whether or not to allow an interchange to be expanded should be made at the full discretion of the Board of County Commissioners given the potential impacts to the surrounding existing and future land uses. The existing language of Policy 6.1.2.6 does not make it clear enough that the County has full discretion over the expansion of the interchange uses. Staff has proposed amended language to the policy to help clarify this issue.

C. STAFF RECOMMENDATION

Planning staff recommends that the Board of County Commissioners transmit the proposed amendment. The proposed changes to Policy 6.1.2.6 are shown in underline format below.

POLICY 6.1.2.....

6. Any contiguous property under one ownership may, at the discretion of the Board of County Commissioners, be developed as part of the interstate interchange, except in the Mixed Use Interchange district, provided the property under contiguous ownership to be developed as part of the interstate interchange does not extend beyond three-quarters of a mile from the interchange centerpoint. Applications seeking interstate uses outside of the interstate highway interchange areas will be evaluated by the Board considering the following factors: percentage of the property within the interstate interchange; compatibility with existing adjacent land uses; and, compatibility with surrounding Future Land Use Categories. This is intended to promote planned developments under unified ownership and control, and to insure proper spacing of access points. (Amended by Ordinance No. 99-18)

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

DATE OF PUBLIC HEARING: January 22, 2001

A. LOCAL PLANNING AGENCY REVIEW

Planning staff gave a brief overview of the proposed amendment. One member of the LPA stated that it was his belief that the expansion of the interstate interchange has always been done at the discretion of the Board of County Commissioners, and that this amendment would simply clarify what has always been the County's policy on this issue. There was no public comment on this amendment.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

1. **RECOMMENDATION:** The LPA recommends that the Board of County Commissioners transmit this amendment as proposed by staff.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The LPA accepted the findings of fact as advanced by the staff.

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
SUSAN BROOKMAN	<u>AYE</u>
BARRY ERNST	<u>AYE</u>
RONALD INGE	<u>AYE</u>
GORDON REIGELMAN	<u>AYE</u>
VIRGINIA SPLITT	<u>ABSENT</u>
GREG STUART	<u>AYE</u>

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

DATE OF TRANSMITTAL HEARING: August 29, 2001

A. **BOARD REVIEW:** The Board of County Commissioners provided no discussion on the proposed amendment.

B. **BOARD ACTION AND FINDINGS OF FACT SUMMARY:**

1. **BOARD ACTION:** The Board voted to transmit the amendment as recommended by staff and the LPA. The Board voted to transmit this item as part of the consent agenda.
2. **BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board accepted the findings of fact as advanced by staff.

C. **VOTE:**

JOHN ALBION	<u>AYE</u>
ANDREW COY	<u>AYE</u>
BOB JANES	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
DOUG ST. CERNY	<u>AYE</u>

**PART V - DEPARTMENT OF COMMUNITY AFFAIRS OBJECTIONS,
RECOMMENDATIONS, AND COMMENTS (ORC) REPORT**

DATE OF ORC REPORT: November 21, 2001

A. DCA OBJECTIONS, RECOMMENDATIONS AND COMMENTS

The Department of Community Affairs provided no objections, recommendations, or comments concerning the proposed amendment.

B. STAFF RESPONSE

Adopt the amendment as transmitted.

**PART VI - BOARD OF COUNTY COMMISSIONERS
HEARING FOR ADOPTION OF PROPOSED AMENDMENT**

DATE OF ADOPTION HEARING: January 10, 2002

A. BOARD REVIEW:

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

1. BOARD ACTION:

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

C. VOTE:

JOHN ALBION

ANDREW COY

BOB JANES

RAY JUDAH

DOUG ST. CERNY

