

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Development/Planning/Zoning	CODE NUMBER: AC-13-6
TITLE: Annual Plan Amendment Procedure to the Lee (Comprehensive) Plan	ADOPTED: 3/29/89
	AMENDED: 3/7/90;5/16/90;5/29/91;1/22/92; 4/1/92;7/8/92;9/1/93;2/16/94;1/4/95;7/24/01; 1/28/03;2/1/11;09/27/11
	ORIGINATING DEPARTMENT: County Attorney/Planning

PURPOSE/SCOPE:

To provide a procedure for amendments to the Lee County Comprehensive Plan (the Lee Plan).

POLICY/PROCEDURE:

A. A proposed amendment to the Lee Plan can be one of the following:

1. A REGULAR AMENDMENT
2. A DRI RELATED AMENDMENT
3. A SMALL SCALE DEVELOPMENT AMENDMENT
4. A COUNTY INITIATED AMENDMENT
5. EVALUATION AND APPRAISAL REVIEW (EAR) BASED AMENDMENTS

B. For purposes of these regulations, the following definitions apply:

1. "REGULAR AMENDMENT" means proposed amendment(s), submitted by any person, upon filing with the Director of Planning (hereinafter called the "Director") a specific proposal for amendment(s) on such forms as the Director prescribes and upon payment of the appropriate fee as determined by Administrative Code.
2. "DRI AMENDMENT" means a proposed amendment which is directly related to a proposed Development of Regional Impact or Florida Quality Development consistent with Sections 163.3184(3), 380.06 (6), and 380.061, Florida Statutes.
3. "SMALL SCALE DEVELOPMENT AMENDMENT" means a proposed amendment directly related to proposed small scale development activities, as defined in, and consistent with, Section 163.3187, Florida Statutes.
4. "COUNTY INITIATED AMENDMENT" means a proposed amendment directed by an affirmative vote of three or more Commissioners.
5. "EVALUATION AND APPRAISAL REVIEW (EAR) BASED AMENDMENTS" means a proposed amendment required as a result of the Evaluation and Appraisal Review process conducted at least once every 7 years, as outlined in s. 163.3191, F.S. An EAR

Amendment occurs when the County determines that plan amendments are necessary to reflect changes in state requirements since the last update of the comprehensive plan.

C. APPLICANTS REQUESTING AMENDMENT TO THE LEE PLAN:

The proponent of an amendment to the Lee Plan must file a specific proposal for amendment(s) with the Director of Planning (hereinafter called the "Director"). The proposed amendment(s) must be filed on forms the Director prescribes and provide payment for the appropriate fee as determined by Administrative Code. An application for a proposed amendment must be accompanied by all documents, exhibits, and written analyses that the applicant intends to offer in support of the proposed amendment.

The proponent of an amendment to the Lee Plan with an ownership interest in the real property that is the subject of a request to amend the plan must disclose its interest in the same manner as is required of zoning applicants in of the Lee County Land Development Code (LDC). If the applicant is acting as agent or attorney for a principal, the principal's interests must be disclosed in the same manner as required of zoning applicants in the LDC. This subsection does not apply to governmental applicants.

D. REGULAR AMENDMENTS will be processed in accordance with the following schedule:

1. Application. Regular amendments may be proposed up until September 30th of any calendar year. Applications received on October 1st or after will be reviewed as part of the following year's Regular Amendments.
2. Staff Review, Report and Scheduling for LPA Hearing. The Director will analyze each proposed amendment and prepare staff recommendations for consideration by the LPA and the Board. The Director will schedule at least one public hearing before the LPA. This hearing will be known as the LPA Transmittal Hearing.
3. LPA Transmittal Hearing. At the LPA Transmittal Hearing, the LPA will review the Director's analysis and make a recommendation to the Board. The recommendation will be to transmit, transmit with specific modifications, or not transmit each proposed amendment. In order to receive a favorable recommendation for transmittal, the majority of the quorum present must vote for the transmittal. If no such affirmative vote is obtained, including those instances where the vote results in a tie vote or those instances where the quorum is not maintained once a hearing is commenced, the recommendation of the LPA will be deemed a recommendation not to transmit the proposal and will satisfy the requirements of Section 163.3174(1) and (4)(a), Florida Statutes.
4. LPA Report. The report of the LPA must consist of the staff report, modified to reflect the vote of each LPA member, along with a brief explanation of the basis of the LPA's vote. These explanations may be handwritten in the interest of expediency.
5. Board Transmittal Hearing. The Director will also schedule at least one public hearing before the Board and arrange for the advertisements required by Section 163.3184(11), Florida Statutes. This hearing will be known as the Transmittal Hearing. The Commissioners will decide whether to transmit any or all of the proposed amendments to the, State Land Planning Agency, hereinafter referred to as the "SLPA". The transmittal report to SLPA must include the staff report, staff's recommendations, the decision of the LPA and the final decision of the Board to transmit or transmit with modifications any or all of the proposed amendments. To be transmitted to the SLPA,

the proposed amendment must receive an affirmative vote of not less than a majority of the members of the Board present at the hearing. If the Board fails to reach a majority decision to transmit or transmit with modifications a specific amendment, the amendment will be deleted from the report transmitted to the SLPA and other reviewing agencies specified in F.S. 163.3184(1)(c).

6. Expedited State Review Process. The Director must deliver the transmittal report to the SLPA and reviewing agencies specified in F.S. 163.3184(1)c within 10 calendar days of the Board Transmittal Hearing. Members of the public may send comments concerning the proposed amendments directly to Lee County Division of Planning. At the conclusion of the 30 day review period, the director will compile the comments of the public and all reviewing agencies and make changes to the proposed amendments, if warranted. The Director will schedule and advertise the final adoption hearing within 180 days. Notice of the adoption hearing must be made in accordance with Section 163.3184(11).
 7. Board Adoption Hearing. At the adoption hearing, the Board must vote to adopt, adopt with modifications, or not adopt each proposed amendment. To be adopted, the proposed amendment must receive an affirmative vote of not less than a majority of the members of the Board present at the hearing. The Board's failure to adopt will be deemed to be a decision "not to adopt" an amendment.
 8. Disposition of Adopted Amendments and Effective Date. The Director will forward within 10 calendar days of the Board Adoption Hearing, the plan amendment package, including all supporting data and analysis for the adopted amendments to the SLPA. Copies of the amendment package will also be provided to agencies that provided comments within the 30 day review period.
 - a. The comprehensive plan amendment package must include the following for every adopted amendment:
 - (1) Executed copy of the adopting ordinance.
 - (2) If a text amendment, a copy of the amended language in legislative format with new words depicted with underscored text and words deleted in strike through format.
 - (3) If a Future Land Use Map amendment, a copy of the Future Land Use Map depicting the parcel reflecting the existing land use designation and the newly adopted designation.
 - (4) Data and Analysis.
 - b. The SLPA has five working days to notify the County of the completeness of the amendment package. The comprehensive plan amendments adopted under the Expedited State Review Process are effective 31 days after the SLPA notifies the Director that the plan amendment package is complete. If challenged, the amendments are not effective until the SLPA or the Administrative Commission enters a final order determining that the adopted amendment is in compliance.
 9. Workshops. The LPA or Board may conduct additional workshops or public hearings at any time during the comprehensive plan amendment process provided that the workshops or hearings are properly noticed.
- E. SMALL SCALE AMENDMENTS may be processed under Expedited Review Process if considered during a regular plan amendment cycle. In the alternative, Small Scale Amendments may be processed in accordance with Section 163.3187 F.S.

1. Small scale amendments may be proposed at any time during a calendar year only under the following circumstances:
 - a. Proposed amendment involves ten acres or fewer; and,
 - b. The cumulative annual effect of the acreage for all small scale amendments may not exceed 120 acres during the calendar year; or,
 - c. The amendment proposes a change to the future land use map for a site-specific small scale development activity. Text changes relating directly to a Small Scale Future Land Use Map Amendment are permissible.
2. Staff Report. The Director must analyze the proposed small scale amendment and prepare staff recommendations for consideration by the LPA and the Board. The Director will schedule a public hearing before the LPA to be followed by a single public hearing before the Board during which the Board may adopt the proposed amendment. All hearings must be scheduled on a regular LPA or Board meeting date. The Director must prepare a staff report and recommendation on the proposed amendment prior to the scheduled LPA hearing. The adoption hearing must be advertised in accordance with Section 163.3184(11), Florida Statutes.
3. LPA Hearing. Following the public hearing, the LPA must make a recommendation to the Board either to adopt, not adopt, or adopt with specific modifications the proposed amendment. Failure of the LPA to recommend, by an affirmative vote of a majority of the quorum present of a proposed amendment, will be deemed a recommendation not to adopt the proposal.
4. LPA Report. The report of the LPA must be incorporated into the staff report and must be delivered to the Board prior to the scheduled Commission hearing. The Staff report must reflect the vote of each LPA member, along with a brief explanation of the basis for the LPA's vote.
5. Adoption Hearing. At the adoption hearing, the Board will decide whether to adopt, or adopt with modifications, the proposed amendment. To be adopted, the proposed amendment must receive an affirmative vote of not less than a majority of the members of the Board present at the hearing. Failure of the Board to reach a majority decision to adopt, or adopt with modifications, a proposed amendment will be deemed to be a decision "not to adopt" an amendment.
6. Workshops. The LPA or Board may conduct additional workshops or public hearings at any time during the comprehensive plan amendment process provided that the workshops or hearings are properly noticed.
7. Challenges by Affected Persons. Affected persons may file a petition with the Division of Administrative Hearings pursuant to ss. 120.569 and 120.57, Florida Statutes, to request a hearing to challenge the compliance of a small scale amendment within 30 days of adoption.
8. Effective Date. Small scale development amendments are effective 31 days after adoption. If challenged within 30 days after adoption, small scale development amendments may not become effective until the state land planning agency or the Administration Commission, respectively, issues a final order determining that the adopted small scale development amendment is in compliance.

F. DRI RELATED AMENDMENTS may be initiated by the LPA or the developer and considered by the Board at the same time as an application for development approval or notice of proposed change, including Florida Quality Developments. DRI Amendments will be processed in accordance with the following schedule:

1. Notice to Agencies. No later than the date of a preapplication conference on an application for development approval or a proposed change, the developer must give written notification of the intent to amend the Lee Plan to the Regional Planning Council, the SLPA, and Lee County.
2. Filing. The DRI-related plan amendment must be filed with the Director, on such forms as he requires and must include sufficient data and analysis upon which the County can determine whether to transmit the amendment pursuant to section 163.3184, F.S. The fee for a DRI amendment will be the same as for regular amendments as established in Administrative Code 3-10.
3. Staff Review, Report and Processing. The Director must advertise the public hearing for the LPA Transmittal Hearing and the Board Transmittal Hearing within 30 days of the filing of the application for development approval or request for a proposed change. The determination to transmit, transmit with modifications, or to not transmit the plan amendment must be made within 60 days from the date of initial filing unless the time is extended by the developer:
 - a. The Director must analyze the proposed DRI related plan amendment and process the request in accordance with the procedures for the adoption of plan amendments under Section D.2-6 above.
4. Board Hearing. The Board must hear the application for development approval or the proposed change and the Lee Plan amendment at the same hearing. The motion to approve an application for development approval or a proposed change must be taken separately from the motion to approve the requested plan amendment. To be adopted, the proposed amendment must receive an affirmative vote of not less than a majority of the members of the Board present at the hearing. Failure to reach a majority decision will be deemed to be a decision "not to adopt" the amendment.
5. Transmittal to State Land Planning Agency. The Director must forward a copy of the adopted comprehensive plan amendment to SLPA for review.

Public Hearing. The public hearing on the DRI or comprehensive plan amendment may not be held sooner than 30 days from receipt of the SLPA's response.
7. Appeals. The appeal process for the County DRI Development Order must follow the provisions of Section 380.07 and the compliance process for comprehensive plan amendments must follow the provisions set forth in Section 163.3184, Florida Statutes.

G. COUNTY INITIATED AMENDMENTS

1. County Initiated Amendments may be proposed at any time by the Board by affirmative vote of three or more Commissioners.

2. The Director must analyze the proposed amendment and process the application in accordance with the procedures for adoption of plan amendments under sections D. 2 through 9 above.
3. County Initiated Amendments may be processed along with Regular Amendments or, if directed by the Board, at any other time.

G. EAR based amendments will be processed in accordance with the following schedule:

1. Application. Amendments to the Comprehensive Plan based on an evaluation and appraisal pursuant to Section 163.3191 will follow the state coordinated review process in Section 163.3184(4).
2. The EAR based amendments will follow the procedures set forth in Section D2 through 5 of this Administrative Code.
3. State Coordinated Review Process. The Director must deliver the transmittal report to the SLPA and reviewing agencies specified in Section 163.3184(1)(c) within ten calendar days of the Board Transmittal Hearing. The cover sheet on the transmittal package must clearly indicate that the plan amendment is subject to the state coordinated review process of Section 163.3184(4). The Director will also transmit copies of the complete proposed Comprehensive Plan Amendment to units of local government or government agencies in the state that filed a written request with the County for the plan amendment.

During the thirty days that follow transmittal to the state, the SLPA will accept comments on the plan amendment from the reviewing agencies and other local governments or agencies. Written comments from the public must be sent directly to the Director of the Division of Planning. If the SLPA reviews the plan amendment, the SLPA must issue a report noting its objections, recommendations and comments (hereinafter referred to as "ORC") within 60 days after receipt of the plan amendment package.

4. Board Adoption Hearing. If no request to review the EAR based amendment package is made, the Board will hold the public adoption hearing in the manner prescribed by statute. If the SLPA prepares an ORC Report, those comments must be received by the County within 60 days.
5. Board Adoption Hearing. The Director will schedule a final adoption hearing within 180 days after receipt of the State's ORC Report unless extended by providing notice to the SLPA and affected persons that provided comment at the transmittal stage. At the adoption hearing, the Board must vote to adopt, or adopt with modifications or not adopt each proposed amendment. To be adopted, the proposed amendment must receive an affirmative vote of not less than a majority of the members of the Board present at the hearing. Failure to reach a majority decision will be deemed a decision not to adopt an amendment.
6. Disposition of Adopted Amendments and Effective Date. Within ten calendar days of the Board adoption hearing, the Director will forward the plan amendment package, including all supporting data and analysis for the adopted amendments to the SLPA. Copies of the amendment package will also be provided to agencies that provided comments within the 30 day review period. The Comprehensive Plan amendment package must include the information set forth in Section D.8 of this Administrative Code.

Plan amendments adopted under the State coordinated review process are effective upon issuance of the SLPA's issuance of a notice of intent. If timely challenged, an amendment will not become effective until the SLPA or the Administrative Commission enters a final order determining the adopted amendment to be in compliance.

7. Workshops. The LPA or Board may conduct additional workshops for public hearings at any time during the EAR based Comprehensive Plan amendment process, provided the workshops or hearings are properly noticed. An EAR based plan amendment adopted under the state coordinated review process would be effective upon receipt of the SLPA's Notice of Intent. If challenged, the amendment would not be effective until the SLPA or the Administrative Commission enters a final order determining the adopted amendment to be in compliance.