

**CPA 2003-03
J. McGARVEY SMALL SCALE
AMENDMENT
TO THE**

LEE COUNTY COMPREHENSIVE PLAN

THE LEE PLAN

**Privately Sponsored Application
and Staff Analysis**

BoCC Adoption Document

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June 24, 2003

**LEE COUNTY
DIVISION OF PLANNING
STAFF REPORT FOR
SMALL SCALE
COMPREHENSIVE PLAN AMENDMENT
CPA 2003-03**

	This Document Contains the Following Reviews:
T	Staff Review
T	Local Planning Agency Review and Recommendation
T	Board of County Commissioners Hearing for Adoption

STAFF REPORT PREPARATION DATE: May 22, 2003

PART I - BACKGROUND AND STAFF RECOMMENDATION

A. SUMMARY OF APPLICATION

1. **APPLICANT:** John McGarvey, Mgr. Partner, Commonwealth Flex Associates, LLC., represented by Mr. Charles J. Basinait, Henderson, Franklin, Starnes & Holt, P.A.
2. **REQUEST:** Amend the Future Land Use Map series, Map 1, page 5 of 5 for a specified 6.8± acre parcel of land located in Section 19 Township 45 South, Range 26 East to change the boundary of Airport Noise Zone 3 to remove the subject property from that designation.

3. SUMMARY DISCUSSION

The applicant is proposing to develop a charter school on the subject site. The subject site is depicted by the Lee Plan as being within Airport Noise Zone 3. Policy 1.7.1 does not permit schools, as well as other specified uses, within Airport Noise Zone 3. Policy 46.3.11 prohibits the location of schools “in the areas designated on the Future Land Use Map as Airport Noise Zone 3 or within other high noise impact areas. The applicant proposes through this amendment to remove this designation from the property so as to allow the development of a charter school on the subject site.

B. BACKGROUND INFORMATION

1. EXISTING CONDITIONS

SIZE OF PROPERTY: ±6.8 acres

PROPERTY LOCATION: 12850 Commonwealth Drive, at the northwest quadrant of the intersection of Commonwealth Drive and Daniels Parkway, in the Gateway/Airport Planning Community.

EXISTING USE OF LAND: Vacant, structure currently being developed on the site.

CURRENT ZONING: PUD

CURRENT FUTURE LAND USE CLASSIFICATIONS: “New Community.”

2. INFRASTRUCTURE AND SERVICES

WATER & SEWER: The property is located within the Lee County Utilities potable water franchise area and within the Gateway Utilities sewer franchise area.

FIRE: The property is located within the South Trail Fire District.

TRANSPORTATION: Access to the property is via Daniels Parkway and Commonwealth Drive.

SOLID WASTE FRANCHISE: The property is located within the Florida Recycling Services solid waste collection service area.

C. STAFF RECOMMENDATION AND FINDINGS OF FACT SUMMARY

- 1. RECOMMENDATION:** Staff recommends that the Future Land Use Map series, Map 1, page 5 of 5 for the specified 6.8± acre parcel of land located in Section 19, Township 45 South, Range 26 East be amended to changed the subject property from Airport Noise Zone 3 to Airport Noise Zone 2.

Additionally, staff recommends that the property owner be required to execute an Avigation Easement that is to be recorded in the county records. This easement acknowledges that there will be noise generated by airport activities including overflight of aircraft and holds the Port Authority harmless as a result of these activities. This easement should be acceptable to the Port Authority and should be executed and recorded prior to the Board of County Commissioners adopting this amendment.

2. BASIS AND RECOMMENDED FINDINGS OF FACT:

- C Utilization of this parcel for a charter school will eliminate the need for Lee County District Schools to construct these classrooms on district campuses.
- C It alleviates the pressing need to meet increasing enrolments at this time in the East Choice Zone which is one of the districts fastest growing areas.
- C There are currently three new schools under construction in the East Zone, but these facilities will not be open for two more years. The charter school is proposed to be opened this fall.
- The Port Authority staff and consultant believe that since the school site is on the extreme edge of Noise Zone 3, it is probable that the site would be removed from Noise Zone 3 following the completion of the FAR Part 150 Study Update which is expected in 2006.
- The desired use of the property, a school, is an envisioned land use within the New Community land use category.
- Existing utilities and infrastructure are in place or available to support the proposed charter school development. The proposed action will not require changes to future road network plans. The approved Development Order for an office building on the site and the approved Concurrency Certificate No. CNC2003-00936 are evidence of the adequacy of services to the parcel.
- The proposed action will result in no population capacity increase of the FLUM.
- The proposal is for a charter school, which could draw students from all over Lee County, thus the neighborhood school concept is not applicable.

PART II - STAFF ANALYSIS

A. STAFF DISCUSSION

INTRODUCTION

The applicant has requested a change in the boundary of Airport Noise Zone 3 to remove a ±6.8 acre parcel from that designation. The request has been submitted to accommodate the development of a charter school. The application provides that “Due to the inclusion of the subject property in Zone 3, the site is currently being permitted as an office use, but the eventual intent, if the small-scale amendment is approved, is to then amend the development order to permit the school function.”

The original Comprehensive Plan Amendment Application and Applicant Supplementary Information are attached hereto as “Attachment 1 - Applicant Supplementary Info”

PROJECT SUMMARY

The applicant proposes to develop the subject property with a 900 student charter school in an approximate 60,000 square foot building commercial uses that are consistent with a high traffic tourist area and workforce commute corridor. The requested future land use amendment would allow such development on this site to be consistent with the overall policies and considerations of the Lee Plan.

COMPREHENSIVE PLAN BACKGROUND

The subject property was designated "New Community" by the original Lee County Future Land Use Map, adopted in 1984. The New Community Future Land Use designation was meant to be applied to lands that are capable of being planned and developed as a cohesive free-standing community offering a complete range of land uses. The New Community land use category permits a full mix of housing types up to six dwelling units per gross acre, community commercial, industrial, office, and community facilities.

ADJACENT ZONING AND USES

The subject site is located within the Westlinks Business Park portion (Gateway Phase 15) of Gateway. Properties to the north and east of the subject site are within the New Community land use area and are zoned PUD. To the north of the subject parcel is a South Trail Fire Station and then several light industrial and commercial businesses. In general, the Westlinks area is characterized with light industrial and commercial businesses. To the South is Daniels Parkway and then the Southwest Florida International Airport property.

The lands to the west and northwest are designated Airport Commerce. Immediately to the west is the approved Airside Plaza DRI which is zoned CPD. The approved phasing schedule provides for up to 125,000 square feet of commercial uses, 140,000 square feet of office uses, 150 hotel/motel rooms, and 290,000 square feet of light industrial uses. The Airside Plaza site is currently vacant and utilized for passive agricultural uses.

POPULATION ACCOMMODATION CAPACITY DISCUSSION

The application notes that "the proposed change will have no effect upon the population projections." Staff concurs in that the request is not changing the underlying New Community Future Land Use Map category. Staff does note that the current restrictions in Airport Noise Zone 3 prohibit residential development on the subject site and the affect of removing this designation would allow the development of residential units on the subject site. Staff believes, however, that it is unlikely that residential uses will be developed on the site given the location of the parcel in a industrial/commercial area and that the parcel fronts on Daniels Parkway. Thus, given the location of the property and existing surrounding uses, it seems unlikely that the property owner will in the future develop the parcel with residential uses.

CONSISTENCY WITH THE "NEW COMMUNITY" LAND USE CATEGORY

The subject property is located within the "New Community" Future Land Use Category. The Lee Plan's Objective and Policy that describes this category is reproduced below:

OBJECTIVE 1.6: NEW COMMUNITY. *Designate on the Future Land Use Map areas which are suitable for the development of large-scale multi-use communities developed pursuant to an overall master plan. This category is also considered a Future Urban Area.*

POLICY 1.6.1: *New Community areas are lands that are capable of being planned and developed as a cohesive unit in order to better achieve conservation of important environmental resources and to initiate areawide surface water management. New Community land must be located such that the area is capable of being developed with a balance of residential and non-residential uses and that major impacts of the development are internalized and/or alleviated by infrastructure that is existing or will be funded privately. New Community areas will be developed as freestanding economic units and will not impose negative fiscal impacts on the county (other than those associated with the delay in placing property improvements on the tax rolls).*

New Communities will not exceed a residential density of six dwelling units per gross acre and must have at least the following characteristics:

1. *The land will be developed under a well-conceived overall master plan;*
2. *The land can be served with all necessary facilities and services at no expense to the county. Uniform Community Development Districts and special taxing districts may be utilized toward achieving this objective;*
3. *Population, recreation, open space, educational, office, and research facilities are distributed in an orderly and attractive manner;*
4. *The land must be developed in such a manner as to protect environmentally sensitive areas;*
5. *The land must be developed as a free-standing community offering a complete range of land uses (e.g. a full mix of housing types for a range of household incomes, industrial and office employment centers, and community facilities such as fire departments, schools, law enforcement offices, public recreational areas, health care facilities, and community commercial areas);*
6. *Off-site impacts must be mitigated; and,*
7. *On-site levels of service must meet the county-wide standards contained in this plan.*

The desired use of the property, a school, is an envisioned land use within the New Community land use category.

MAP 16 - PLANNING COMMUNITIES AND TABLE 1(b)

Map 16 and Table 1(b) do not regulate public facilities such as schools.

TRANSPORTATION ISSUES

Lee County Department of Transportation has reviewed the proposed action and provided a letter which states, "We have no objection to the above application since TAZ 626, in which the proposed project is located, includes a projected 1,800 students in the Lee County MPO's 2020 Financially Feasible Plan Model, and the proposed project has only 900 students...We have determined the proposed project will not alter the future road network plans."

SCHOOL IMPACTS

Lee County School District staff has reviewed the proposed amendment and provided an email to planning staff. This email provides that "This application would have a very positive impact on the Lee County School District, as it would eliminate the need to construct these classrooms on Lee County School District school campuses. It alleviates the pressing need to meet increasing enrollments at this time in the East Choice Zone which is one of the District's fastest growing areas. Currently, three new schools are under construction in the East zone which will not open for two more years, thus this proposal will help offset the growth experienced in this choice zone while these new schools are under construction." This email further

provides that “In the future, improved coordination with Lee County planning, the charter school applicants, and the District’s Department of Construction and Planning should occur to assist in the location of these facilities and possibly avoid their future location in industrial parks or other commercial locations.”

The Lee Plan seeks to direct the location of schools (as well as other “noise sensitive” uses) away from areas impacted by noise, such as adjacent to the international airport. For example, Policy 1.7.1 provides that Airport Noise Zone 3 does not permit schools. Policy 46.3.11 also provides that it is the County’s policy to “Prohibit the location of schools in the areas designated on the Future Land Use Map as Airport Noise Zone 3 or within other high noise impact areas.”

The Lee Plan seeks to protect schools from incompatible uses:

Policy 46.3.1: Protect the integrity of schools so that educational functions are not disrupted by the intrusion of incompatible land uses.

Policy 46.3.5: Land uses and development will not be permitted to the extent that it could necessitate the relocation of schools due to pressures from incompatible uses.

Policy 46.3.10: Prohibit school sites that are or will be exposed to physical constraints, hazards, or nuisances which are detrimental to the health and safety of students and to the general operation of the school.

The Lee Plan, as provided in 46.3.6, encourages “the location of neighborhood elementary schools within walking distance of the residential areas they serve.” Staff notes that the nearest residential unit in Gateway is approximately 3,500 feet north of the subject site following existing roads through the Westlinks business park. As the proposal is a charter school, which could draw students from all over Lee County, the neighborhood school concept is not applicable.

NOISE AND THE INTERNATIONAL AIRPORT

The subject site is located just north of the Southwest Florida International Airport across Daniels Parkway. The site is located, as previously stated, within Airport Noise Zone 3. The specific location of the subject property in this Zone is on the western edge of the Zone. The portion of this Zone that the subject property is located within is a relatively small triangular shape that contains approximately 70 acres from the western edge of the Gateway development to Gateway Boulevard. The site has been identified in the high noise exposure area since the Airport opened.

The applicant has provided a brief noise study entitled “Acoustical Evaluation of Potential Noise Impact at planned Lehigh Charter School at Daniels Parkway & Commonwealth Dr.” The Lee County Port Authority noise consultants, Environmental Science Associates (ESA), have reviewed the proposed plan amendment and have provided comments (attached) dated May 19, 2003. This memorandum provides the following concerning the applicant’s noise study:

“The report is based primarily on short term monitoring conducted by the Consultant and did not indicate the number of aircraft departures that occurred during the noise monitoring period. However, with the lower noise levels from departing aircraft now using RSW, the LEQ values seem appropriate for aircraft generated noise or a combination of aircraft and Daniels Parkway traffic generated noise.

Of importance in the report is that it indicates the construction materials for the proposed school will provide for a significant noise level reduction of 38 dBA. With the location of the proposed school being at the extreme

fringe of the overlay zone, considering the noise levels that were monitored and with the type of construction being provided, the interior noise levels should be acceptable for school use.”

The ESA memorandum contains the following “Recommendations:”

“It should be recognized that, while the school building is currently under construction and the site will probably be removed from Zone 3, it is still influenced by aircraft departure noise. Furthermore, additional aviation facilities will continue to be constructed on airport and future aviation activities will occur in reasonable proximity to the proposed school site. With these factors in mind the following are our recommendations. If it is determined that the school should be approved, the Port Authority should request that sufficient sound insulation be incorporated in the building construction to allow for a maximum 45 dB interior sound level. It appears from the Fegan report that the construction methods and materials will comply with this recommendation. Additionally due to the proximity of future aviation activities, the proposed school developer/property owner should sign an aviation easement, waiver of claim, or similar hold harmless indemnification document that certifies their knowledge of the proximity of the Airport. In addition, it should acknowledge the airport’s future anticipated growth and recognize the fact that there is potential for airport-related noise exposure at the school site. In order to assist in the regulation of compatible land uses in the airport area, aviation easements, waivers of claim, or similar hold harmless indemnification documents should also be signed by all future developers/owners within Noise Overlay Zones 2 and 3 as was recommended and approved in the 1995 Federal Aviation Regulations Part 150 Noise Compatibility Study.

The uniqueness of the school site that is the subject of this letter compared to other areas of noise Zone 3 is that it is on the fringe of Noise Overlay Zone 3 and within a currently developed community. We would hope in the future that the integrity of the Noise Overlay Zones will be maintained until the FAR Part 150 Study Update is completed.”

The ESA memorandum also provides that new noise contours were developed as part of the Master Plan Update for the airport. The memorandum notes that the departure flight tracks in the vicinity of the school site have remained the same. The memorandum also notes that the noise contours have reduced in size “from those previously published.” The memorandum provides the following explanation:

This reduction in contour size is primarily the result of the elimination of Stage 2 aircraft from the national air carrier fleet (effective January 1, 2000). The proposed school area in question was likely included within Noise Zone 3 due to the influence from departure noise by Boeing 727 aircraft and by other Stage 2 aircraft. Now that all Boeing 727 aircraft have been either retrofitted to meet noise standards or retired altogether, the departure noise in the area in question has reduced. Since the school site is on the extreme edge of (sic) Noise Zone 3, it is probable that the site would be removed from Noise Zone 3 following the completion of the FAR Part 150 Study Update in 2006. However, since the location of flight corridors is a decision making element of Noise Zone status, a final determination of the status of the site could not be made until the Part 150 Study Update is completed.

PRECEDENTIAL NATURE OF THE REQUEST

The proposed amendment is the first private amendment to ever propose amending the Airport Noise Zone Overlay. Staff is aware of only one other request to place “noise sensitive” uses within Airport Noise Zone 3. Miromar Lakes DRI initially requested time share units in the vicinity of Ben Hill Griffin Parkway in Airport Noise Zone 3. Ultimately these units were not approved.

SOILS

The applicant has provided information indicating that soils present on the site are Felda fine sand and Felda fine sand, depressional. A “Soils Map” and a description of the soils are included in the original application material. The application notes that “the entire site, however, has been cleared and filled, so that the natural conditions no longer apply.”

HISTORICAL AND ARCHAEOLOGICAL IMPACTS

The application provides that “There are no historic districts or sites located on the subject property or on adjacent properties.” The subject parcel is not located on either Level 1 or Level 2 zones of archaeological sensitivity.

ENDANGERED SPECIES

The application provides that “the subject property is currently under construction, has been cleared and filled, and contains no species that are threatened, endangered, or are of special concern.”

County Environmental Sciences (ES) staff are familiar with the property and have verified that the property was previously cleared and that no listed species are present. ES staff further verified that the wetland area in the southeast corner of the property shown on application Exhibit 1 was permitted to be impacted through the South Florida Water Management District permit.

PARKS, RECREATION AND OPEN SPACE

The Department of Public Works has reviewed the proposal and determined “that existing and proposed support facilities provided by Lee County Parks and Recreation will not be impacted by the proposed amendment.” Public Works staff notes that this is so because the request will not have any impact on population projections for the County.

DRAINAGE/SURFACE WATER MANAGEMENT

The application does not provide an existing and future conditions analysis for surface water/drainage basins. Staff notes that this issue has been dealt with through various permitting activities that have taken place concerning the subject site.

MASS TRANSIT

Lee County Transit Division has reviewed the proposed action and provided a letter of response which states that Lee Tran staff has reviewed the proposed amendment and “has determined that the proposed amendment to the future land use map would have no impacts on existing or planned services Lee Tran provides, nor would it have any impact to the budget of Lee County’s transit division.”

UTILITIES

Concerning utilities, the applicant has provided supplemental information that provides the following:

“Upon inquiry with the engineers (Hole Montes, Inc.), I was informed that the subject property is in the Gateway Utilities service district...I am informed that when the original subdivision was platted, provisions for utilities were made and approved by the County for all parcels in the subdivision, including the subject property. I can provide copies of the approved development order for the subdivision if that is deemed necessary, but I believe that the existence of the plat, a copy of which was provided as part of the application materials, should suffice as evidence that all improvements, including utilities, were either constructed or bonded in accordance with the County’s requirements. Thus, the County has already approved the design and capacity issues associated with the utilities for the subject property, and there should be no question regarding whether this infrastructure is available to the site.”

Staff agrees that availability of utilities to the site has previously been addressed. In fact, the provision of most infrastructure issues have been adequately addressed. The approved Development Order for an office building on the site and the approved Concurrency Certificate No. CNC2003-00936 are evidence of the adequacy of services to the parcel.

B. CONCLUSIONS

Staff finds that the necessary infrastructure is in place to accommodate the desired use. Staff also finds that there is a need for additional classroom space to accommodate the ever growing student population. Both the applicants noise consultant and the Port Authority noise consultant agree that the noise contours associated with airport activities have been reduced as Stage 2 aircraft have been replaced by quieter Stage 3 aircraft. The Port Authority staff and consultant believe that since the school site is on the extreme edge of Noise Zone 3, it is probable that the site would be removed from Noise Zone 3 following the completion of the FAR Part 150 Study Update which is expected in 2006. The subject property while currently in Airport Noise Zone 3 is outside of the actual 65 dBA noise contour. Noise contours generally do not follow recognizable boundaries but were essentially “squared off” to allow easy identification on the ground. Considering the above conclusions, the removal of the Airport Noise Zone 3 and inclusion of the subject site within Airport Noise Zone 2 would not violate the purpose and intent in establishing the noise zones, but would allow for the construction of needed classrooms.

C. STAFF RECOMMENDATION

Staff recommends that the Future Land Use Map series, Map 1, page 5 of 5 for the specified 6.8± acre parcel of land located in Section 19, Township 45 South, Range 26 East be amended to changed the subject property from Airport Noise Zone 3 to Airport Noise Zone 2.

Additionally, staff recommends that the property owner be required to execute an Avigation Easement that is to be recorded in the county records. This easement acknowledges that there will be noise generated by airport activities including overflight of aircraft and holds the Port Authority harmless as a result of these activities. This easement should be acceptable to the Port Authority and should be executed and recorded prior to the Board of County Commissioners adopting this amendment.

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

DATE OF PUBLIC HEARING: May 28, 2003

A. LOCAL PLANNING AGENCY REVIEW

Planning staff provide a brief summary of the proposed amendment. The applicant's agent also presented the request to the LPA. No members of the public appeared to testify concerning the proposal.

B. LOCAL PLANNING AGENCY RECOMMENDATION AND FINDINGS OF FACT SUMMARY

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

C. VOTE:

NOEL ANDRESS	<u>AYE</u>
SUSAN BROOKMAN	<u>AYE</u>
MATT BIXLER	<u>AYE</u>
RONALD INGE	<u>AYE</u>
GORDON REIGELMAN	<u>ABSENT</u>
DAN DELISI	<u>ABSTAINED</u>
ROBERT PRITT	<u>AYE</u>

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

DATE OF ADOPTION HEARING: June 24, 2003

A. BOARD REVIEW: Staff provided a brief summary considering the proposed amendment. Staff stated that the staff recommendation weighs and balances the purpose and intent in establishing the noise zones. Staff noted that it is probable that the subject site would be removed from Noise Zone 3 following the completion of the FAR Part 150 Study update which is expected in 2006.

The applicant's representatives stated that they were available to answer any questions that the Board might have. No persons from the public appeared and testified.

B. BOARD ACTION AND FINDINGS OF FACT SUMMARY:

- 1. BOARD ACTION:** The Board of County Commissioners voted to adopt the proposed small scale amendment.
- 2. BASIS AND RECOMMENDED FINDINGS OF FACT:** The Board of County Commissioners accepted the findings of fact as advanced by the staff and LPA.

C. VOTE:

JOHN ALBION	AYE _____
ANDREW COY	AYE _____
RAY JUDAH	AYE _____
JOHN MANNING	AYE _____
DOUG ST. CERNY	AYE _____