

The applicant requests an amendment to the Declaration of Restrictive Covenants relating to PC 06-12 limiting the development of the property from 56 garden apartments and 24 townhome units to 123 garden apartments (**See Exhibit 2**). The property is located north of West McNab Road, directly to the west of South Dixie Highway, and to the east of Interstate 95 within the City of Pompano Beach (**See attached aerial photo**). The former use of the property was a mobile home park.

The land use plan amendment was adopted by the County Commission on March 21, 2006 and changed the Land Use Plan designation from Commercial to Medium-High (25) Residential on 5.4 acres. The land use plan amendment permits a maximum of 135 dwelling units. The property covered by PC 06-12 is also known as Parcel B of the Captiva Club Plat recorded in Plat Book 176, Page 143. An application has been filed to amend the note restricting development on the Captiva Club Plat from a mixture of townhouse units and garden apartments to 360 garden apartments consisting of 72 very low income and 288 low income units.

As a condition of the land plan use amendment, a voluntary commitment limiting the number of dwelling units to 80 residential units consisting of 64 villas and 16 townhouse units was made by the developer to mitigate student impacts. (**Exhibit 3**). Prior to the recordation of the Declaration, the developer revised the residential mix to 56 villas and 24 townhouse units. The original Declaration of Restrictive Covenants became an exhibit to this amendment and both were recorded in Official Record Books 42751, Page 1932 (**Exhibit 4**). On September 11, 2007, the developer once again amended the voluntary commitment. The second amendment was recorded in Official Records Book 44605, Page 1366 (**Exhibit 5**) and changed the 56 villas to 56 garden apartments, while maintaining the overall dwelling unit limitation of 80 dwelling units. The current request to amend the latest Declaration of Restrictive Covenants increases the dwelling unit limitation by 43 dwelling units to allow a total of 123 garden apartments. This revision is still below the maximum density of 135 dwelling units allowed by the land use plan designation.

The applicant's full justification is attached in **Exhibit 6**. The applicant proposes to develop the property subject to Land Use Plan Amendment PC 06-12 in conjunction with a large affordable housing project encompassing all of the Captiva Club Plat, consisting of 360 garden apartments. The applicant states that the developer originally voluntarily agreed to limit development to 80 units as a cost saving measure to limit impact fees. The applicant indicates student enrollment projections have declined and the School Board has indicated that there is school capacity available to serve the proposed residential development. The applicant also states that at the time the original land use amendment was approved, the market supported townhouse/villa development. However, now the proposed garden apartments are better suited for current market conditions and allow for more units to be constructed on site.

The School Board of Broward County has no objection to the applicant's request (**Exhibit 7**). According to the School Board, the current restriction limiting the property to 56 garden apartments and 24 townhouse units generates 40 students based on the student generation rates (Ordinance 97-40) (19 elementary, 11 middle, and 10 high school) adopted at the time the Second Amendment to the Declaration of Restrictive Covenants was executed. The developer voluntarily agreed to pay the cost per student station amount for 6 elementary and 11 middle school students as reflected in the

Declaration of Restrictive Covenants recorded in O.R. Book 44605, Page 1366. The proposed Third Amendment to the Declaration of Restrictive Covenants generates less than 30 students (15 elementary, 7 middle, and 8 high school) based on the student generation rates currently in effect (Ordinance 2008-11). According to the School Board, the 80 units addressed in the Second Amendment to the Declaration of Restrictive Covenants are vested for public school concurrency and will be required to pay student station fees. The additional 43 units are subject to public school concurrency review at the plat or site plan phase of development or the payment of school impact fees.

The attached letter from the City of Pompano Beach indicates no objection to this request (**Exhibit 8**).

The attached memorandum from the Broward County Planning Council (**Exhibit 9**) states that there have been a total of 133 voluntary commitments associated with land use plan amendments made since the adoption of Broward County's Land Use Plan in 1989 and 79 commitments have been made since 2003. Planning Council staff indicates that PC 06-12 was analyzed for traffic impacts without the proposed unit restriction from 54,000 square feet of retail to 135 multi-family dwelling units. The traffic analysis indicated that the amendment reduced the number of project pm peak hour trips on the regional transportation network by 318 trips. On June 27, 2006, the County Commission adopted Policy 01.07.07 which requires municipalities to demonstrate, for amendments which propose to add 100 or more residential dwelling units, that the city has chosen policies, methods and programs to achieve and/or maintain a sufficient supply of affordable housing. If Land Use Amendment PC 06-12 was currently being processed, Policy 1.07.07 of the BCLUP would apply. The developer intends to designate the entire 360 garden apartment project for low and very low income affordable housing, as documented by the attached Affordable Housing Certification Letter (**Exhibit 10**).

The attached minutes indicate that there was little or no discussion at the Planning Council transmittal and adoption hearings (**Exhibits 11 and 12**). Additionally, there was no discussion when the County Commission took Final Action on March 21, 2006 (**Exhibit 13**).

Staff is aware of 6 occasions when the County Commission approved changes to voluntary commitments after the approval of a land use plan amendment. The first involved increasing the allowable square footage for a commercial land use plan amendment in Pembroke Pines. The second involved increasing dwelling units within a land use plan amendment in Sunrise and redistributing the units within a planned development resulting in no net increase in dwelling units. The third terminated restrictive covenants for a residential land use plan amendment in Coral Springs after the property was changed back to a commercial designation. The fourth request released an age restriction for a land use plan amendment in the City of Sunrise. The fifth case, approved by the Board on October 27, 2009, released restrictive covenants for a land use plan amendment in the City of Parkland that limited the level of development and age restricted some of the residential units. Lastly, on June 15, 2010, the County Commission approved changes to restrictive covenants for a land use plan amendment in the City of Miramar reducing the number of units, removing the adult

restriction, changing the unit type and bedroom mix and permitting ancillary office use within the industrial portion of the project.

The County Commission considers voluntary commitments in deciding whether to approve changes to the County Land Use Plan. The dwelling unit restriction was accepted by the Board at the time the amendment was considered. The Board relied on this commitment in its decision to approve this amendment. After a land use plan amendment is approved, there is no legal mechanism for it to revert back to the original plan designation, in the event a voluntary commitment is unfulfilled or changed. This request is not quasi-judicial and the Board is not obliged to approve it based upon compliance with the Land Development Code.

Staff has previously expressed concerns regarding the precedent that removing or modifying voluntary commitments proffered during the land use plan amendment process may create. However, staff recommends APPROVAL of this request for the following reasons:

- 1) Economic and housing market conditions have changed significantly since the land use plan amendment was approved in 2006.
- 2) The Developer intends to designate the project, as currently proposed, for very low and low income garden apartments.
- 3) The proposed amendment represents a decrease in traffic when compared to the original commercial land use plan designation and therefore does not adversely impact the operating conditions of the regional roadway network.
- 4) The School Board of Broward County has no objections to the request. The developer will be required to pay student station fee for the original 80 units. The 43 additional units will be subject to school concurrency at the plat or site plan stage or the payment of school impact fees.
- 5) The City of Pompano Beach has no objection to this request.

Staff recommends APPROVAL subject to the following:

1. Prior to the recordation of the pending application to amend the note on the Captiva Club Plat, the applicant must record the Third Amendment to the Declaration of Restrictive Covenant related to PC 06-12 in a form acceptable to the County Attorney's Office and the School Board.

